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ROYAL COMMISSION ON MATTERS OF HEALTH AND SAFETY
ARISING FROM THE USE OF ASBESTOS IN ONTARIO

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APPEARANCES:

| | |
|-----------------|------------------------------|
| Mr. T. Lederer | Government of Ontario |
| Mr. D. Starkman | Asbestos Victims of Ontario |
| Miss L. Jolley | Ontario Federation of Labour |

180 Dundas Street
Toronto, Ontario
Monday,
July 5, 1982

VOLUME 47 B

ROYAL COMMISSION ON MATTERS OF HEALTH AND SAFETY

ARISING FROM THE USE OF ASBESTOS IN ONTARIO

VOLUME 47

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THE FURTHER PROCEEDINGS OF THIS INQUIRY
RESUMED PURSUANT TO ADJOURNMENT

APPEARANCES AS HERETOFORE NOTED

DR. DUPRE: Good morning, ladies and gentlemen.

Today the Commission meets for a series of informal presentations by individuals and parties. The first presenter this morning is Mrs. Betty Glaser.

You are very welcome here this morning, Mrs. Glaser. May I ask, if you wish, that you sit at the presenters' table over here so that the microphone can pick up your presentation for the sake of the record?

MR. LEDERER: Mr. Chairman, I wonder if I might make a brief comment before you formally begin the day's proceedings?

DR. DUPRE: You may, Mr. Lederer.

MR. LEDERER: Thank you.

Mr. Chairman, I have indicated to you in private discussions that we have had that it is unfortunately not possible for me to be with you next week when you come to call witnesses

MR. LEDERER: (cont'd.) from the Workmen's Compensation Board.

5 When that evidence is called next week, Mr. Mark Edwards, who has been here before, will be with you, and I anticipate that Mr. Edwards will be here this afternoon. I hope that you won't take it as any sign of disrespect that I will not be present at that time. It just seemed best to me that we make the switch apparent at the lunch break today, and hopefully I
10 will be back before you finally conclude your hearings.

DR. DUPRE: Thank you, Mr. Lederer. We understand your predicament and certainly thank you for making Mr. Edwards available.

MR. LEDERER: Thank you, sir.

DR. DUPRE: Mrs. Glaser, good morning.

15 MRS. GLASER: Mr. Chairman, members of the Royal Commission, ladies and gentlemen, I am here on behalf of my sick husband Gus Glaser, who is classed to have forty percent of asbestos.

20 There has been much said about asbestos, the pros and the cons of this deadly fiber, also how to determine the amount of asbestos a worker has and how much disability he should be awarded.

I was to have Mrs. Leder, Mrs. Glaser and Mrs. Litke here. However, due to transportation problems they were unable to be here.

25 All of these women have lost their husbands within the last few years, all of the men being employees of Johns-Manville.

Abel Leder died August, 1980, of one hundred percent asbestosis.

30 Alfred Glaser, October, 1980 - no indication of asbestos was revealed in any of the company x-rays during his

5 MRS. GLASER: (cont'd.) thirty years of employment, yet when he had surgery the doctor found that he was full of asbestos.

Mrs. Allen Perkins is here. Her husband died about a year ago. He had worked briefly at Johns-Manville many years ago. He died a year ago of asbestos - one hundred percent.

10 Mike Litke had been awarded twenty-five percent disability a few years before he died. When they operated, he had one hundred percent asbestosis.

These are but a few cases very close to me. What other proof must one have?

15 All these cases show without a doubt the men died of asbestos. Is it not time now that Workmen's Compensation give full disability payments to men with asbestos, regardless of their percentage? No monies can bring back these men and all the other dead men.

The companies that were negligent in informing the employees of the hazards of asbestos should be made to pay for all the human lives lost.

20 Thank you.

DR. DUPRE: Thank you, indeed, Mrs. Glaser.

Could I just ask you a couple of questions?

MRS. GLASER: Yes, certainly.

25 DR. DUPRE: You very kindly sent us a written brief under the date of September 22, 1981, in which you pointed out that your husband had appealed his case to the WCB for complete disability.

MRS. GLASER: Yes.

30 DR. DUPRE: As of the time of writing, which was last September, you noted that his hearing had taken place on April 22nd, and that as of September 22nd, you had not yet heard from the appeal board. Have you heard from the appeal board?

MRS. GLASER: Yes, I have, and he was denied the claim.

DR. DUPRE: He was denied the claim?

MRS. GLASER: He is very ill. He is at home. He has lost a great deal of weight, but he won't...he has no fight left.

DR. DUPRE: Were you given the reasons for the denial of your husband's claim?

MRS. GLASER: Yes. They said that due to his arthritis and different complications they felt that he was adequately awarded.

My husband said at this time...the oxygen, let me put it this way...whatever is going on, the oxygen does not help him any more. We do have it at home and on occasions he does require it, but it does not...like, oh, six months ago it would help.

I believe he will be entering the hospital within the week because he has severe pain. He has told me that due to, like the people that I have mentioned, they were relatives and close friends, that he will not be operated on, he will not go to the hospital, he will just die at home.

DR. UFFEN: Do you happen to have a date with you when the appeal judgement was made?

MRS. GLASER: I believe it was...

DR. UFFEN: It was recently, but do you remember when?

MRS. GLASER: When we were...for the appeal?

DR. UFFEN: Yes.

MRS. GLASER: April 21st, 1981. Yes.

DR. UFFEN: The 21st of April. Thank you very much.

DR. DUPRE: Thank you very much indeed, Mrs. Glaser.

MRS. GLASER: Thank you.

DR. DUPRE: Is Mrs. Perkins here?

MRS. PERKINS: Yes.

5 DR. DUPRE: Mrs. Perkins, could I ask you to please sit at the table? Mrs. Morag Perkins.

If you please, Mrs. Perkins.

Good morning, Mrs. Perkins.

10 MISS PERKINS: I didn't really prepare anything to say. I just really wanted to talk about the difficulty and how it disrupts...it has disrupted our life.

15 My father has been dead just over a year, and I know apparently my mother is lucky because she gets one hundred percent compensation. Just the same, it isn't enough for her because our life has been so altered by this that...my mother is a person that only worked part-time, she had a family and everything, and now everything is reoriented and we don't really have a place that we will be living in for very long, and there is the problem of, you know, her being a widow and trying to get a home, trying to get a job and all this.

20 But evidently we are lucky because we have got one hundred percent compensation. However, the luck of that seems to sort of...it eludes me. I don't understand that very much.

25 The injustice mostly, to me, seems just from the fact that this went on, the testing and so on wasn't done beforehand, and just the destructiveness of the disease itself, what happened to my father that I saw happen to him, and then how it has changed our lives, and it has changed it so much and that there is so little help in doing this, there is such little publicity for even this that's going on. So few people understand or even think of it that to me that's what makes it really
30 difficult to get something done, to get something across, not only with asbestos but in other industries like this one.

MISS PERKINS: (cont'd.) If compensation is necessary, then proper testing should be done initially so that, you know, there shouldn't be commissions like this to investigate compensation needs.

I'm sorry. I didn't really prepare anything. I just sort of wanted to explain the difficulty that my mother is having in trying to cope with her entirely new lifestyle.

DR. DUPRE: Well, let me say that your oral comments, Mrs. Perkins, speak volumes and we are very grateful that you are here.

Could I ask you just a couple of questions?

MISS PERKINS: Mmm-hmm.

DR. DUPRE: Prior to his death, was your father in receipt of a disability pension from the..

MISS PERKINS: He got...yeah, he did - six months before, or something like that. He died on June 27th, and it was January that he was diagnosed, and I think he received it almost within a few months, my mom started getting compensation then. It was one hundred percent then, I think.

DR. DUPRE: Oh, it was one hundred percent right from the beginning?

MISS PERKINS: He had one hundred percent, yes.

DR. DUPRE: And you say that it took about six months from the diagnosis until the time when he began to receive compensation?

MISS PERKINS: No, no. Before he died. Six months...

MRS. PERKINS: We received it right away.

MISS PERKINS: He received it, like, within a month or so, but it was six months from diagnosis until his death.

MRS. PERKINS: But they paid it retroactively, when he was diagnosed.

MISS PERKINS: So he got it from January.

MRS. PERKINS: Yes.

MISS PERKINS: Until June.

DR. DUPRE: And your late father was at Johns-Manville, if I remember from your written brief, for only four years?

MISS PERKINS: About three and a half, four years. Yes.

DR. DUPRE: Do you remember the dates and the years?

MISS PERKINS: It was just before I was born, and I was born in 1957.

DR. DUPRE: I see.

MRS. PERKINS: He started in 1953, I think it would be, when he started there.

DR. DUPRE: He started in 1953 and left right around 1957.

MRS. PERKINS: Yes. About three and a half years.

DR. DUPRE: Dr. Uffen, any...?

DR. UFFEN: Johns-Manville, the plant in Scarborough?

MRS. PERKINS: Yes.

MISS PERKINS: Port Union.

MRS. PERKINS: He worked in a high-risk area where they fed the raw asbestos in.

DR. UFFEN: Did it have a technical name?

MRS. PERKINS: Probably, but I don't know what it is. I'm sorry...and he often went on double shifts. He was, you know, he worked in a bad risk area. When he come home, he was just covered in the stuff.

MISS PERKINS: He said you could see it in the air and at that time they had no masks. I have a friend who has worked there since, and he said they have a lot of protective, you know, gear around now, but at that time my Dad said they

MISS PERKINS: (cont'd.) didn't have anything.

5 DR. DUPRE: This friend of yours who worked there since, what years has he been working there?

MISS PERKINS: He worked there as a student in the summer when he was at university, and he just graduated this year, so he was at university for four years and he graduated in 1981, so it would be 1977...

10 DR. DUPRE: From 1977 to 1981?

MISS PERKINS: Every summer, yes.

DR. DUPRE: Thank you.

Any other questions?

DR. UFFEN: No. It's difficult to ask a question about something where you weren't actually there at the time.

15 MISS PERKINS: My mother was.

DR. UFFEN: Well, I'm curious about the little statement that was in the letter that was written:

"My father told me that the only protective equipment he had seen there was a mask which lay unused in the corner for the full four years."

20 MISS PERKINS: That's when he told me he had never had any protective equipment offered to him.

DR. UFFEN: It was there, but nobody showed him how to use it...

MISS PERKINS: No.

25 DR. UFFEN: ...or said when to use it, or anything like that.

MISS PERKINS: My friend, who has worked there since, he said that there were still men who didn't use protective equipment although they had been shown and offered it. But he said there was people who didn't use it.

30 But according to my Dad, they were never shown how to use it, or offered it.

5 DR. UFFEN: Do you know offhand what kind of a mask...masks are everything from a little gauze thing that sits on your nose to...

MISS PERKINS: No.

10 MRS. PERKINS: I never heard anything about it. I don't remember him saying anything about it at all. We just didn't know about the risks in those days. We just never thought about it. It was a good job, it paid well, and that was what we thought about. We never gave the other part a thought.

15 He eventually became allergic to asbestos. This is why he left, because his head all broke out in great red blotches, and he had a terrible pain in his chest that they couldn't diagnose. It was Dr. Corson was his doctor, and every time he breathed he had a stabbing pain in his chest, from when he started to work in the plant. And he never did find out what it was. You know, he went to specialists and he had x-rays, but...

20 DR. DUPRE: Just one other question, if I might. During that period, 1953 to 1957, was your husband ever x-rayed?

MRS. PERKINS: Yes.

DR. DUPRE: He was being x-rayed by...

MISS PERKINS: Dr. Corson.

MRS. PERKINS: And he got pleurisy quite a lot.

25 DR. UFFEN: Is Dr. Corson a family physician or the plant physician?

MRS. PERKINS: Family physician.

MISS PERKINS: He was also the company doctor.

MRS. PERKINS: But one year he got x-rayed at the exhibition...remember they used to have the chest...?

DR. UFFEN: Yes.

30 MRS. PERKINS: And they found something and they phoned him and they said go to your doctor immediately. He did

5 MRS. PERKINS: (cont'd.) go to Corson, and he said it was all right, it was probably just lesions from pleurisy showing up.

DR. UFFEN: I just want to make sure I had it clear. Dr. Corson was both the plant physician for Johns-Manville, and the family physician?

MRS. PERKINS: Yes.

MISS PERKINS: Yes.

10 DR. DUPRE: We have no further questions, but thank you so very much for appearing.

MRS. PERKINS: Thank you.

DR. DUPRE: Mrs. Dodds.

Mrs. Dodds, it's our pleasure to welcome you back.

15 MRS. DODDS: Thank you very much, Dr. Dupre.

DR. DUPRE: Before you begin your presentation, I would simply like to say that I am very grateful to you for the very comprehensive brief that you put in concerning your husband and I want to tell you that the factual material that you have assembled in that brief, that details his most unhappy case, is something that, as a Commissioner, I have found most educational in terms of trying to come to grips with some of the policy problems that we have.

20 We were most grateful for all the information that you provided on his behalf.

MRS. DODDS: Thank you very much, Mr. Chairman.

25 Mr. Chairman, members of the Royal Commission, distinguished guests, friends, ladies and gentlemen:

30 Odette Dodds, widow of the late John Dodds, victim of the Johns-Manville company: Thank you from the bottom of my heart, thank you children, grandchildren, for your affection and support during and after our ongoing tragedy. A proud mother. Love, Mom.

5 MRS. DODDS: (cont'd.) I wish to thank Charlie Neilson, union president at the time, and his family, for their support and friendship during my husband's illness and after his death. Our best wishes for the future. The Dodds/Briden family.

10 Also, my thanks to Stephen Lewis, who needs no introduction, for his constant concern during the time of my distress. I couldn't wish for a better supporter, writer, speaker and, should I say, a friend. Always. John, Odette Dodds and family.

I wish to thank Robert W. Stewart, former executive union director and our union lawyer, Daniel Ublansky, for their great co-operation.

15 Gratitude to my dear husband's doctors. I wish to thank Dr. Stuart Smith for helping me to obtain a widow's pension and bringing a certain Canadian justice.

Also to Minister of Labour at the time, Dr. Robert Elgie, and the Honorable Lincoln M. Alexander, for their assistance.

20 Many thanks to Ajax and Pickering General Hospital, the Princess Margaret Hospital and Lodge, the Lynhurst Hospital and the Toronto General Hospital, and Nestor Winchester for their considerable care for my dear husband.

25 In addition to this line up, I should express recognition to Dr. A.C. Wallace for his assistance in the matter at hand.

To my dear friends and neighbors, thank you to the Meck's family for helping me in every way they can, and a dear, close friend, Beatrice Machie.

30 Many, many thanks to my dear, best, sincere friend Louise Parish, who helped me in many ways.

Sincerely, Odette Dodds and family.

MRS. DODDS: (cont'd.) This is the truth, the whole truth and nothing but the truth, so help me God.

5 Growing old in bitterness: In 1974, John went to a medical advisor, highly recommended. We were hoping to get some help.

10 I can still picture my husband right now, when one day I brought him the sad news. The medical advisor had put on black and white, "I cannot find any good evidence of asbestosis or silicosis".

John shook his head by telling me, 'this is a nightmare. Don't tell me I have to be dead to prove my point.' And he was right.

15 I am growing old in bitterness knowing this painful injustice could have been prevented.

I often ask myself how, after such a testimony, the person can still work, live with his wife and children and go to church or sleep at night.

20 The good people pay for the bad ones. Would my honesty destroy me, too?

Only time will tell, and I am willing to take that risk. After all, I have nothing to lose. I have lost everything - my very dear husband.

25 A hopeless case: There was a time that John and I thought very highly of the medical profession. We always thought doctors support and help each other. We always thought doctors practice the hypocritic oath (sic).

A tragedy had to happen to find out how wrong we were. They say two heads are better than one. The situation I was in was a hopeless case. In my case, I required a dozen heads.

30 Through my own courage and determination I succeeded, with the help and guidance of my close advisors and friends, and above all, the mental support of my dear family and various

MRS. DODDS: (cont'd.) relations. They never let me down.

Even our grandchildren, they were an affectionate help to me. Children accept us for what we are. Grownups cannot always do that.

A miracle: Thanks to our devoted, honest physicians and, allow me to say so, myself, my husband was able to live as long as he did. Why and how, I'll never know.

Then, after he passed on, I was forced to fight to obtain a widow's pension. However, the biggest problem was having to contend with a form of controversy in medical opinion.

Was this a matter of diagnosing, or for some reason or other a situation where the medical expert does not wish to make a statement.

As I mentioned on previous occasions before, making a small name in history by bringing a certain Canadian justice and by exposing the reluctance of the medical people to commit themselves in making a justified statement, thus not sparing the character of those at fault, namely, the asbestos company.

I am grateful to the Canadian Chemical Workers Union, at that time, now Energy and Chemical Workers Union, Local 26.

Ministry of Health: Each year John had an x-ray at work. The Department of Health used to bring their own equipment to the plant. They also knew the danger of asbestos. They are as much to blame as the company by leaving us in the dark.

Please note the Workmen's Compensation Board emblem carries the words 'justice and humanity'. I pity any worker who has to deal with the Workmen's Compensation Board.

We had a sad experience in 1974. We were lucky. John and I were able to compete with the critics and pressure. We were lucky our family is grown up and it's a close family, and still is.

MRS. DODDS: (cont'd.) We were lucky we had no debts and had a few savings.

5 How many couples were as lucky as we were? What actually happened should not have happened in a civilized country. Sick benefits stopped, unemployment insurance discontinued, Canada Pension Plan, no OHIP coverage. The worst for a sick person, and many of the workers experienced the same.

10 Please, make sure it does not happen again. You have the power to do so, I don't.

 In 1946, big industry comes to Port Union on historic Dixon Farm.

 In 1946, Johns-Manville decided to build an asbestos plant in Port Union.

15 I quote from "Facts and Folklore", written by Mr. John Spilsbury.

 "Canadian Johns-Manville was thirty years old when they opened in Port Union in May, 1948.

20 To Scarborough council, indeed most of the people of the township, it was good news. Here was big industry coming to a relatively-poor township, with much needed tax dollars, a million dollar payroll annually, and employment for three hundred and fifty people.

25 To some local residents it was an aggravation because an historic farm had given way to a noisy, smelly factory.

30 Canadian Johns-Manville had its problems initially. Some people complained of the linseed oil smell from the rock wool manufacturing process, so the company built a new two hundred feet poured concrete stack in 1949, to replace the fifty feet metal one."

End of quote.

5 MRS. DODDS: (cont'd.) It should be mentioned that there was no pressure from any level of government to correct this problem. We all became human guinea pigs. Johns-Manville company knew before building that asbestos plant the danger of asbestos. The magic mineral with dust that kills...the biggest industry killer in history.

Our men were dead ducks before becoming Johns-Manville asbestos workers.

10 As the years went by, Johns-Manville infected our men with industrial diseases. There never was any concern for any of us, not even for our children at school, yours.

15 More value was put on the dollar than on human health. No wonder Johns-Manville Company still laughs all the way to the bank while getting away with murder for the last thirty-three years.

Yes, those barracudas certainly have something to laugh about. I repeat, yes, those barracudas certainly have something to laugh about.

20 Us wives, widows, we certainly have something to cry about. All our men are dead or dying through Johns-Manville negligence.

Let's all remember this: It's not the ones who die who suffer any longer, but the one who still is on the earth.

25 Death is a part of our lives. We all know sooner or later we have to die. The worst part of it is when you know when and how, and John and I knew when and how, and I wouldn't even wish my worst enemy to experience what we went through - hell on earth, hell on earth.

30 Do you know what it is like to count the years, the months, the weeks, the days, the hours, and then the last minutes. Then suddenly, it is all over. Everything you worked for for a lifetime, there is nothing left of it. Your lives just

5 MRS. DODDS: (cont'd.) look like a very bad earthquake. You are surrounded by debris and graves. You are scarred for the rest of your days, and you still can't do a bloody thing about it. Damn it! Do you know what Johns-Manville has done to me? To my children? Even our grandchildren? To all of us? We are affected physically, mentally and financially.

10 First they took the health of our workers, the lives of our men, our pride, dignity and respect. They destroyed our homes, our rights.

Honi soit qui mal y pense. Dieu et mon droit. God and my right! I demand justice! We demand justice!

15 The time has come for Johns-Manville Company to pay for all the crimes they have committed. It is our turn to laugh all the way to the bank. But all the money and all the tea in China will never be able to bring our men back. At least give us the satisfaction to live in care and comfort, pride and respect, they even took that all away from us.

20 Money is power, power is everything. I am only a widow with willpower. There is nothing like it. I am Odette Dodds, the late John Dodds' widow, something to be proud of.

Rest in peace. We won't forget you.

25 Am I coming on too strong? No way! Not when human lives are involved. I still have a long way to carry my cross while trying to prevent more crime.

30 July 26, 1978, much advice was given to me by my husband before he died. For example: If the Workmen's Compensation Board tries to put the blame on the cigarette, to remember there is only two men to get in touch with and to trust - Charlie Neilson, union president at the time...we all owe Charlie Neilson a great deal.....unfortunately the poor bugger never had any thanks or credit for it...and Stephen Lewis, who

MRS. DODDS: (cont'd.) needs no introduction, during the time of my distress.

5 The day my husband passed away, July 27, 1978, I started to make the late John Dodds' file. Am I ever glad I did.

10 Mr. Chairman, members of the Royal Commission, distinguished guests, friends, ladies and gentlemen, this is my dearest John Dodds, what's left of him. I hold in my hands forty percent disability.

15 Many of his fellow workers experienced the same. As a matter of fact, some of them never even reached forty percent. Many of our former Johns-Manville asbestos workers live now in shame and poverty due to Johns-Manville negligence and greediness, and let's not forget about the widows who are still fighting to obtain a widow's pension and a certain Canadian justice.

20 You cannot teach someone to become a pusher. You have to be born one, and John and I were very lucky that way. Thank God for his gift.

25 Considering the tragic experience, I have made it. It matters to go on fighting to improve conditions for others.

30 Johns says, "Dying is easy. Going on living and fighting for a cause, human rights, it's the hardest part".

Once again my dear husband was right, and that's what I'm doing right now, for all of us. But once again, I cannot do it all alone. I need some help - yours.

25 Mr. Chairman, members of the Royal Commission, distinguished guests, friends, ladies and gentlemen, to you and yours the very best. Take care and God bless.

Thank you.

DR. DUPRE: Thank you very much, Mrs. Dodds.

30 Mrs. Dodds, in the course of your very moving presentation you asked a question, and that question was, 'am I

5 DR. DUPRE: (cont'd.) 'coming on too strong', and I will answer that question. Mrs. Dodds, no, you cannot come on too strongly. We are very grateful for the way you have enriched our proceedings by relating to us this most poignant tragedy.

Thank you.

MRS. DODDS: Thank you very much, Mr. Chairman.

Any questions? No?

10 DR. DUPRE: I was just going to ask my colleagues. Dr. Mustard?

MRS. DODDS: No questions? Oh.

A penny for your thoughts.

15 DR. DUPRE: I myself have no questions, Mrs. Dodds. I think that a presentation such as yours answers all its own questions.

Thank you very much.

MRS. DODDS: Thank you very much, Mr. Chairman.

DR. DUPRE: May I now...is Mr. Pagnello here?

MR. PAGNELLO: Yes.

20 DR. DUPRE: Mr. Pagnello, would you like to come to the presenter's table?

MR. PAGNELLO: I don't have much to add other than what was on my presentation, unless there are some questions.

DR. DUPRE: Thank you.

We would be happy to ask you a few.

25 MR. PAGNELLO: Okay.

DR. DUPRE: Please make yourself at home. I welcome you on behalf of my colleagues.

30 Could I just, I realize incidentally, of course, that your presentation, among other things, is very valuable to us not least because it gives us a very valuable view of the so-called rehabilitation program, which of course our own research studies, including the one by Peter Barth, have raised some

5 DR. DUPRE: (cont'd.) rather telling criticisms about, and of course the personal perspective, I may say, that you provide is most helpful to us in terms of fleshing out how it looked on the receiving, or the nonreceiving, end.

But could I just, on a couple of things, Mr. Pagnello, ask you the following: Your informative written brief starts off by pointing out that it was around 1970 that you realized something that was not right with your breathing.

10 How long had you been working in the plant in 1970?

MR. PAGNELLO: About nine, nine and a half years.

DR. DUPRE: Oh, you had already been there for nine and a half years.

MR. PAGNELLO: Yes.

15 DR. DUPRE: During those nine and a half years, you had always been involved in the asbestos end of the plant?

MR. PANGELLO: I was a maintenance welder and I had to work on the machinery, get right in it, and I spent about three months with Mrs. Dodds' husband - he and I were given the assignment to rebuild the whole dust collector. It was a real old rickety thing which was, you know, shouldn't have even been in operation, and it was one that took over from the main dust collector, when the main dust collector shut down to shake this other dust collector would take over.

20 We had to work in this thing. We were in there for three months in asbestos that deep, walking in it, and we had to rebuild this thing from start to finish, and we had to know when to get out of there when it started up because the dust was flying all over the place.

25 During that three-month period, there was never any supervisor had ever come up there to inspect what we had done, or whether they give a darn whether we had done anything in that, simply because they didn't want to get into that

MR. PAGNELLO: (cont'd.) environment.

5 I don't know how I'm alive either, to be honest with you, when I think back of what I did. We really didn't, at that time, know. We knew there were people got sick from asbestos, but just how serious...we didn't take it that serious, unfortunately.

10 Of course, after that, as I say, in 1970, how I realized, I was standing by a pool with my nephew and this little fellow...there was two or three children there, my own son was one of them...and a little chubby kid next door came in and watched my boy swim and he thought, heck, I can do that too, and he jumped off the side and he was going like this and he was going right down to the bottom.

15 It looked so comical that I have a pretty hearty laugh when I laugh, and I exhaled and my nephew had to jump in and get the kid, and when he got out I was laying on the...I had taken a dizzy spell from the laughing, and I fell down.

20 From that time on, I realized that...I used to do a little bit of square dancing...I couldn't do that any more. If I exerted myself, or even if I coughed, exhaled, stars come before my eyes, you see, and you get these dizzy spells and you just have to be very careful how you exert yourself.

But I just thought well, gee whiz, you know, maybe it's some passing thing, and I didn't take it too seriously.

25 But I could see, you know, that my condition was getting worse all the time, until the time that I was approached by the nurse...I was walking past the cafeteria and she knocked on the window and she said there is a gentleman in there from the Compensation Board wants to see you.

DR. DUPRE: By this time, we are in 1977, right?

MR. PAGNELLO: Yes.

30 And I went in to see him and he said, I'm Mr.

MR. PAGNELLO: (cont'd.) Pearce, I would like to tell you about this rehab plan.

5 I said, well, what the heck are you telling me about that for? He said, you mean nobody has told you there is something wrong with you? I said, no.

10 It just hit me like a ton of bricks. Of course, by this time we know how serious these things are and everybody is just hoping that they aren't one of the unlucky ones.

From then on...

DR. DUPRE: Could I just interrupt you with a question at this point? In 1977, the plant nurse approached you and as you pointed out, you shortly after met the WCB representative, Mr. Pearce.

15 Now, prior to 1977, you had been x-rayed by the Ministry of Health, regularly, had you?

MR. PAGNELLO: Yes.

DR. DUPRE: Was this once a year, or every year and a half?

MR. PAGNELLO: It was every year at that time.

20 I became a mainenance supervisor in 1971. I had a bad back and one thing and another, and I was offered the planners job, and then from there they made me supervisor.

So actually, I wasn't in much dust from that point on as I had been for the first ten years.

25 DR. DUPRE: But all the way back, going all the way back to the very beginning, you were being x-rayed by the...

MR. PAGNELLO: Well, Johns-Manville make you get an x-ray to begin with, before you start there, and then...

DR. DUPRE: The year you started, again, was which year?

30 MR. PAGNELLO: 1961.

DR. DUPRE: 1961.

5 MR. PAGNELLO: Then every year after that, and I noticed on the little green card the numbers were going up, and we didn't know what the numbers were.

10 Of course, I hadn't had any x-rays at the company. I had letters to go in and I had never taken any for the last couple of years or so, because I just feel they don't do any good anyway. If you find out you've got it, you've got it, and as Mr...as the doctor himself explained here, he don't believe in giving people these tests or x-rays because of the extra radiation that they get from it.

DR. UFFEN: Do you mind if I interrupt?

15 You mentioned the little green card and the numbers were going up?

MR. PAGNELLO: Yes.

DR. UFFEN: Is this a medical card that was...I'm not sure that I understand what the card is.

20 MR. PAGNELLO: There is a little green card you get and it was the one that Dr. Vingilis spoke about here, quite lengthy.

DR. UFFEN: Yes.

25 MR. PAGNELLO: Before you get your x-ray, you get a metal number and it was on your card, and you take that to the technician. It's a way of...

DR. UFFEN: Who kept the cards? Did the plant doctor keep the cards, or where did they come from?

30 MR. PAGNELLO: Well, I think they came from Grosvenor Street, but they are distributed at the plant when the x-ray unit comes in. The nurse sits there and she has them all on a little table, and as you come in she gives you your little green card just before you take your x-ray.

I noticed on that my numbers were going up quite...

MR. PAGNELLO: (cont'd.) pretty good, so I, you know, got sort of concerned about, to know what this was all about.

As it turned out, the chap, the supervisor that ran the unit when it came into the plant, from Grosvenor Street, his name was Jim Knight, and he was a friend of mine through organized hockey. He coached boys hockey and I did too, and I knew him.

He explained to me what these numbers were all about. His explanation wasn't quite like Dr. Vingilis's. He led me to believe that once you hit...the last I saw on mine, mine was three plus. I know Dr. Vingilis said even from one to three doesn't make much difference.

I don't understand why they have different numbers if there is no difference, and the fact that they put a plus behind a number means also a difference, so that sort of...when I heard the testimony here I couldn't figure that out at all.

Now, I was told by this gentleman, and I guess...I'm not sure whether I should say what he said or not, he is not here to protect himself, or I'm not sure he would want to protect himself, but he told me that once you reach a four, you are in pretty good trouble.

Now, this is the supervisor.

So I began to worry about that at that time, and this is before, of course, I was told that I had anything wrong with me.

DR. DUPRE: Could I just ask you, what year did you notice you had a three plus?

MR. PAGNELLO: I couldn't...I wouldn't want to say for sure, but I would say it would be about 1975, 1976, somewhere in there, approximately.

This gentleman I spoke of, he is retired. I don't know how long he has been retired from the unit. Quite a little while.

5 MR. PAGNELLO: (cont'd.) One thing I would maybe like to mention is the treatment of Mr. Pearce from the Compensation Board. He seemed like a very gentlemanly type of person and very polite, and when you talked to this man what you can't take...you just can't seem to take his word for anything, or his promises. He'll let you down so badly and I know when I spoke to them last, I was getting a little irritated with him because he kept promising and promising and you would never see the guy.

10 There was quite a bit of discussion about his daughter working at the plant there in the summer months, which shouldn't really matter. But when it was mentioned, he told me that I had better get a lawyer ready if I ever mentioned that his daughter worked at the plant, again.

15 From that date on, he banged the phone down and that was it. The man has never spoken since.

DR. MUSTARD: What were you told by the nurse in 1977, or Mr. Pearce? What did they say your problem was? Did they tell you?

20 MR. PAGNELLO: The nurse didn't tell me anything. She just...I was walking by the cafeteria, she knocked on the window and waved to me, and I stopped and she said, there is a gentleman in my office waiting to see you, from the Compensation Board.

25 DR. MUSTARD: But were you given any information about what they thought your problem was?

MR. PAGNELLO: Yes, Mr. Pearce said that you are one of the people who have been chosen, who qualify to go on the rehabilitation program.

I says, what for. I says, the doctor has never told me anything.

30 He was quite surprised that the doctor hadn't approached me before he got there to let me know that there was

MR. PAGNELLO: (cont'd.) something wrong with me.

I was very upset about it, and the plant manager was very upset about it when I told him what happened - Mr. Machin.

He said you mean to say that no one has told me that there is something wrong with you before the man interviewed you? I says, no, I didn't know a thing.

DR. MUSTARD: But has somebody told you what your underlying problem is and what you have to do about it, or what you can do about it?

MR. PAGNELLO: Up to this date has anyone told me, you mean?

DR. MUSTARD: Yes.

MR. PAGNELLO: All I have been told is that I have early dust effects, and that it would be better if they rehabilitated me, and it was my choice. The same thing they told everyone else, I guess.

DR. MUSTARD: Now, has anything...what surveillance are you under at the present moment, and what consideration of any kind are you receiving either medically for from other sources in terms of the particular problem that was identified to you in 1977?

MR. PAGNELLO: There's nothing. They just said they have eliminated it. Now I don't qualify, because I'm not there any more.

DR. MUSTARD: Sorry. They eliminated your underlying condition? Did they say that they had eliminated your underlying chest problem?

MR. PAGNELLO: No. No, they said...I went right through as far as I could go, I even wrote a letter to the Honourable Mr. Alexander, the chairman of the board, and he was good enough to write me back, but he said due to the fact that I am no longer in the plant...and that was the reason they were

5 MR. PAGNELLO: (cont'd.) wanting to get me out in the first place, was just to get me out of the environment, and now that I'm out, I didn't qualify anymore.

DR. MUSTARD: For the rehabilitation program?

MR. PAGNELLO: Yes.

10 DR. MUSTARD: But what about the surveillance of your underlying chest condition? Is anybody keeping an eye on that?

MR. PAGNELLO: Yes. Well, the company have sent me a letter everytime the x-ray unit comes in, to tell me to come in and take my x-ray.

DR. MUSTARD: But do you go in?

MR. PAGNELLO: I wouldn't go in there no more, no.

15 DR. MUSTARD: Do you have a family physician?

MR. PAGNELLO: Yes.

DR. MUSTARD: Does he know all about your condition? Have they given him the records?

20 MR. PAGNELLO: Well, he does, but he says, I'm no expert on that sort of thing. But actually, Grosvenor Street... I was down there about a year ago, I believe, and had x-rays there, right at Grosvenor Street.

DR. MUSTARD: And your family physician was given a report of those x-rays?

25 MR. PAGNELLO: Yes. And they are just like a form letter. They come out and say that there is no active disease present.

30 But the letter I got back from Alexander was that he had conversation with the company and they told him that I was getting a pension, which I was - a hundred dollars a month, after twenty years, from the company...a hundred and two dollars a month to be exact...plus other considerations that they gave me. More or less, in other words, he said they looked

5 MR. PAGNELLO: (cont'd.) after you pretty well, you don't need any compensation, or you don't need any rehabilitation.

The other considerations were that I was given severance pay, and if I die, my wife gets nothing out of this pension either. It is eliminated. I made the mistake. I tried to change it, and they wouldn't change it, within a few days.

10 If my wife had been on the pension, it would have been eighty dollars a month, so I had a choice of taking a hundred and two or eighty, and I should have taken it to cover my wife, and I didn't. It was too late to do that.

15 DR. MUSTARD: Are you able to exert yourself now? Or is your ability to exert yourself still restricted?

MR. PAGNELLO: Well, I have a boy that's sixteen years old and he was fooling around with me in the hallway...this is about a year ago...just a little wrestling, and this was only for maybe a half a minute, and when I went down it was just like a timebomb flicking in my head. I thought I was going to die right there and I had to holler at the boy to let me go, you know. That's how bad it was.

20 Yet normally, if you're not just like this, you feel fairly normal, you know...other than I do get dizzy spells pretty often.

25 DR. MUSTARD: After you left Johns-Manville, have you taken up other work?

MR. PAGNELLO: No, I applied for a few jobs and I don't know whether it's the age or the fact that I worked at Johns-Manville, but I never seem to hear. I've got a lot of experience and I could do a heck of a job somewhere, I know that, in the maintenance side, you know, in building maintenance and machinery and equipment. But economic times aren't the greatest,

MR. PAGNELLO: (cont'd.) so that doesn't help matters either, I suppose.

5 But I have asked other boys, too, and they claim that as soon as they hear Johns-Manville mentioned, they're scared, you know, they are afraid, you know, that I suppose you are going to get sick and maybe they are going to be the goats. It's not really the best situation for them, I don't suppose, to hire people like us, really.

10 DR. UFFEN: I have been listening to you and reading the written submission, and there are a couple of things I would kind of like to get clear, if I could.

15 When you were first approached about the rehabilitation program, and it came as a surprise to you then that you had something wrong with you, nobody had told you beforehand that you were ill or potentially ill.

20 Then when they told you about the program, as I get it here, they told you about it twice - once when your wife was with you and then later on, and then the guy showed up from the Workmen's Compensation Board along with Mr. Pearce, and this is a third time?

MR. PAGNELLO: Yes.

DR. UFFEN: And it was then that you asked them would they please give it to you in written form?

25 MR. PAGNELLO: Yes. He says, what's your problem. I said, well, I'm not just sure, you know, what you are offering.

From what I had heard, to be honest with you, I didn't trust the verbal part. There was a lot of mistrust, and he said, I said, well, I wouldn't mind if you put it on paper.

30 He said, Joe, if...and this is the way this gentleman talks...he says, Joe, if you want it on paper I'll just definitely see that that's what you get.

But I think this was a supervisor sitting next door

5 MR. PAGNELLO: (cont'd.) to him, who was along with him, and he wouldn't even tell me this gentleman's name because he still denied that I even asked for it.

DR. UFFEN: Do you remember when that was? I'm trying to keep track of when these happened.

MR PAGNELLO: I would say it would probably be around 1978.

10 DR. UFFEN: But since they wouldn't write it down for you, would you take just a minute and tell us what your recollection is of what you were...what was being suggested to you?

15 MR. PAGNELLO: Yes. It was mainly explained to me at the Howard Johnson, and my wife was with me, Mr. Neilson was with me, and several people from the Compensation Board. They said that they would give us, guarantee us I think seventy-five percent...that the Compensation Board would make up up to seventy-five percent of our wages if we wanted to relocate and start a little business, or whatever. That they would help us in every way in moving and relocation, and all that sort of thing.

20 However, there was no benefits supplied. Like, hospitalization or anything like that. You are strictly on your own on that part.

He says, well, the other thing was, we can only guarantee you a year, and then after the year you will probably be on your own.

25 That was very, that scared the daylights out of you right there for one thing. So I still had children in public school, and my wife and I talked about it, and I can tell you, the whole thing just scared the daylights out of all of us. My kids were crying, and my daughter unfortunately worked there a couple of years during the summer, and she knew, I guess, what happened to a couple of people there, too.

30 It's something that you can't really say that there

MR. PAGNELLO: (cont'd.) is just a man dying, like Mrs. Dodds explained. It's what it does to your whole family.

I know my son, older son, was worried about it all the time, you know.

DR. UFFEN: Could I just pursue this. After you had this explanation made to you and they didn't answer your request about writing it down, you mention here later on, Mr. R. Wilson of the industrial relations department. That was of Johns-Manville?

MR. PAGNELLO: Yes.

DR. UFFEN: Not the Workmen's Compensation Board?

MR. PAGNELLO: No, he was Johns-Manville. He met me at the door one day and he said, Joe, have you decided whether you want to go on the program or not? I says, no, because Mr. Pearce was supposed to send me a letter explaining everything I was going to get, or entitled to.

He said, well, anytime you are ready, he says, you let me know, he says, and we'll push it through for you.

DR. UFFEN: Then soon after that you were laid off?

MR. PAGNELLO: I was laid off in June 1980. I was told on a Thursday that I would be finished on Friday.

Mind you, now, I don't want that to sound...there were previous little warnings that things were tough, so it wasn't as though there wasn't some previous warning as a general thing to everyone concerned. But no one knew who it was going to be, you know, or whether it would be anybody there.

DR. UFFEN: Before you were laid off, had you said to them, no, I don't want to be on the program, or had you said I still don't understand it and I want it in writing?

MR. PAGNELLO: I went for months and months trying to get the letter from Mr. Pearce, and right up until the day that

5 MR. PAGNELLO: (cont'd.) I left, I still never got the letter from him. And I asked him in the presence of the nurse one day, and he still couldn't remember.

That was when one of the boys there said, I'm not taking his word any more. I'm sending him a registered letter. He was lucky enough that he got action from his registered letter, which is what I should have done.

10 DR. MUSTARD: I'm just trying to understand what you were offered in terms of this rehabilitation program.

What they were offering you was financial assistance to establish yourself in your own business?

15 MR. PAGNELLO: He said there was a part of the program that if we wanted to get into a business, they would assist us that way as well.

DR. MUSTARD: Now, in return for taking on this particular program, what were you asked to do? Did you give anything up? Did you give any claims up if you took it on?

How was it explained to you?

20 MR. PAGNELLO: They didn't say anything about...they didn't say didn't say anything about that. It was just a program to get you, apparently, out of the plant.

DR. MUSTARD: Away from that company or just out that part of the company?

MR. PAGNELLO: Out of the dust.

25 DR. MUSTARD: I see.

MR. PAGNELLO: Because they didn't want you to get any worse than you were. They figured, I guess, that you had had enough, and the idea was to get you out and get you, hopefully get you rehabilitated so that you could do something else.

30 DR. MUSTARD: So were there two options then? One would be to help you establish your own business, to be away from the firm with whom you are employed?

MR. PAGNELLO: Yes.

5 DR. MUSTARD: Or secondly, relocated in a different part of the existing operation of Johns-Manville?

MR. PAGNELLO: No, there was no mention of that.

DR. MUSTARD: I see.

MR. PAGNELLO: No, they wanted me right out of the company.

10 DR. MUSTARD: I see. The company took no responsibility to find another part of the plant which would be dust-free?

MR. PAGNELLO: No.

DR. MUSTARD: So the rehabilitation required you to find employment with another organization?

15 MR. PAGNELLO: Yes.

DR. MUSTARD: Did you have to find that employment, or was the board going to find that employment for you?

MR. PAGNELLO: They were going to assist me. They were going to assist me. They would make sure that I got no less than seventy-five percent of my wages, I believe it was.

20 DR. MUSTARD: What about such things as seniority and pension plans that you had been paying into? What sort of offer did they make on that?

MR. PAGNELLO: Nothing. Nothing whatsoever.

DR. MUSTARD: So you would lose whatever seniority and benefits you had built up?

25 MR. PAGNELLO: Yes. I lost a very great deal even as it was. When I left there, my pension, of course, is a hundred dollars a month, a hundred and two dollars a month. You lose four percent for every year you leave early before sixty-five, so I lost that much of my pension, and I couldn't get my...when you are on salary you are allowed to buy company
30 stocks with a certain percent of your salary, and when I left

5 MR. PAGNELLO: (cont'd.) there I couldn't get the stocks out to cash them. Their rules were that unless you had the actual stocks in your hand...they were worth thirty dollars a stock then, and I had to wait, I think, two or three months to get them, and by the time I got it they were worth, I think, eight or nine dollars last week. So I lost about seven thousand dollars there, in stocks, that I had saved during my period there.

10 DR. DUPRE: I just have one question. You mentioned, if I recall correctly, that former employees of J-M are at a disadvantage in looking for work, am I correct in recalling that?

MR. PAGNELLO: Yes.

15 DR. DUPRE: Let me say at this point that you are by no means the first person, or for that matter, group, that has mentioned this as a possibility.

Have you ever been told outright by an employer that given the fact that you were once exposed to something that might cause you disease, thanks, but no thanks?

20 MR. PAGNELLO: I have never been, sir, no. I haven't been ever told that, but I kind of cringe when they ask me where I worked, because they look at you and it's funny how in the last three or four years the word has got around and everybody seems to be aware of asbestos. They are getting that way, anyway.

25 It used to be that it didn't mean too much to anybody, but it sure does now.

DR. DUPRE: And you have friends who have told you they have gotten the same impression as you have?

MR. PAGNELLO: Yes.

30 DR. UFFEN: By the way, were there many other people at the same time as you were offered the opportunity of

5 DR. UFFEN: (cont'd.) the rehabilitation plan, were there any of your other chaps working with you that took advantage of it?

MR. PAGNELLO: There were very few, very few. I think...now I'm not in a position to say just how many. This stuff was all kept pretty private, you know, amongst the individuals.

10 I know a few years later a couple of fellows went on it, they are still on it, and the day he come in to interview me the last time he had a stack of papers I would say three-quarters of an inch thick. He said, these are all people we have that are eligible for the program.

15 Just before I was laid off, Mr. Neilson told me that there was a list going around, they were offering us all the rehab program again, and the company had agreed to pick up all the benefits at this time. This made it sound a little better for people, you know, with families.

20 So I was expected to be...and I was told that my name was on that list, I had never seen the list...and then all at once the thing blew up. The company, from what I understand, the company...when I left there I talked to the plant manager from the States, and he said, 'we've offered to do our part. It's the Compensation Board that won't do their part now.'

25 So something happened between them, and I don't know what happened. So that fell through again.

30 But I know from some of the later layoffs there, that I've heard of, they are offering fellows with more seniority and the union, they just can't do what they did to me, they have got to go by seniority, and even though those fellows, some of them were going out of there anyway, and they are still getting on this program. So I don't know.

The senior fellows that are coming out of there

Pagnello

5 MR. PAGNELLO: (cont'd.) they are going on the program and junior people are staying on the job, and the only way they can get those senior fellows to come out there, by the looks of it, is to offer them the program. That's the way they seem to be working it now.

DR. DUPRE: I have no further questions, Mr. Pagnello. Thank you. You have been very, very helpful.

Thank you, indeed.

10 I understand that Mrs. Cam Hano, is that right, would like to come forward at this time? Please, Mrs. Hano.

Welcome, Mrs. Hano.

MRS. HANO: Thank you.

15 After hearing all the conversation, I wasn't prepared to speak today, but my husband worked at Johns-Manville for thirty years. He died last August.

I have tried to bury most of the terrible things that went on over the years, but after hearing everybody here, I could echo all their sentiments.

20 Mr. Pearce...we were so excited one time when he came to visit in our home, and my husband was going to be rehabilitated.

We never heard a word from that man again, and we were thrilled because we thought maybe there is some hope, maybe there is something that my husband could do.

25 But I just wanted to say something here. My husband worked there thirty years. He died last August. He was retired for two years, because he was very ill. He had asbestosis. He also had a few other diseases...a heart attack, a serious heart attack eleven years prior.

30 Now, the heart attack was probably caused by lack of oxygen. I'm not an expert. He had a lupus, he was getting compensation when he died - five hundred and fifty-seven

MRS. HANO: (cont'd.) dollars a month, which helped us a great deal.

5 I had never worked. I started to work part-time. And then when he died, I got nothing. I have three children, two still in school.

They said his death was not compensable. He was only fifty percent disabled by asbestos.

10 I haven't done anything because I don't have much fight either, but I would like to have a lot more. After hearing everybody here today...it is a terrible thing. It upsets your whole life. It doesn't stop just because he is dead.

15 I didn't order an autopsy. I couldn't at the time. But I might, just to prove to them...I know he had it. He couldn't walk. He couldn't do anything, you know. I did the driving the last couple of years.

20 I could go on and on and on and tell you all these sad tales, but that's part of life. But I hope just a little word - there must be some justice if you work at a place for all those years and the Workmen's Compensation is supposed to help those workers and their families if they cannot work - even if they die.

Do you have any questions?

DR. DUPRE: I have no questions.

DR. MUSTARD: How old was your husband when he died?

25 MRS. HANO: Forty-nine.

DR. MUSTARD: When, again, did they first diagnose his condition?

MRS. HANO: Oh, in 1975, when they had those hearings for the rehabilitation.

30 They were all told...well, all the ones that had it were told how much they had. It started with ten percent and then it would go up the following year to twenty, thirty, and

MRS. HANO: (cont'd.) up until, of course, they said he had fifty.

5 DR. MUSTARD: What do you remember them telling you and your husband what the problem was? What did they tell you?

MRS. HANO: Oh, a shadow on the lungs, probably. He didn't tell me much about his illness, but I believe they told him he had a shadow on his lung.

10 He had a shadow on his lung a long time before then, and then probably it was dust...if he worked there in 1951, the conditions then were terrible. Like you couldn't walk down... he told me it was very, very dusty.

15 DR. MUSTARD: But in 1975, he was still working for Johns-Manville?

MRS. HANO: In 1979 he got very ill, and had expected to go back to work but could never go back again.

DR. MUSTARD: What was his illness like? Do you recall it? Do you recall what his problem was?

20 MRS. HANO: I don't remember what they called it. He had quite a few bad times. Just go to bed and...I can't remember what he had. But, like, he had to go to the hospital, like emergency, eh?

DR. MUSTARD: Did he have trouble walking, breathing?

MRS. HANO: Oh, yes. Yes. Everything. Yes. All those things, those terrible things.

25 DR. MUSTARD: When was the last time he was assessed and rated by the Board?

MRS. HANO: Let me see...

MR. CAUCHI: Excuse me, Mr. Chairman. I've got those papers over here.

30 MRS. HANO: You have what? My papers?

MR. CAUCHI: Yes.

MRS. HANO: I'll have to get my glasses.

I wasn't prepared to tell you, like to talk, eh?
I thought I would like to listen, but I can try if you have time.

DR. MUSTARD: No, I don't think you need to worry about that. I can look at it.

MRS. HANO: Okay.

DR. DUPRE: I have no further questions, but thank you very much Mrs. Hano, and Dr. Mustard will be looking for the figures.

MRS. HANO: Thank you.

DR. DUPRE: The remaining presentations, at the moment, are all scheduled for this afternoon. If there is an afternoon presenter who would like to come forward this morning, could you so signify?

MR. JONES: I, myself, as one can come forward.

DR. DUPRE: Okay. You are not scheduled? You would just like to make...

MR. JONES: I am scheduled for this afternoon at two-twelve or two-fifteen.

DR. DUPRE: Are you Mr. Jones?

MR. JONES: Yes.

DR. DUPRE: Well, Mr. Jones, could I propose that you be so kind, if we take about a ten minute break, and then come back at about quarter to for presentation.

Mr. Cauchi?

MR. CAUCHI: Seeing as I brought these ladies with me and we are all finished, I wonder if I could go next?

DR. DUPRE: Well, okay.

MR. CAUCHIE: And take them home.

DR. DUPRE: So you can take them home. And you could make your presentation then?

MR. CAUCHI: I would like to be next.

DR. DUPRE: Would that be all right with you, Mr. Jones?

MR. JONES: No problem.

MR. CAUCHI: If it's possible.

DR. DUPRE: Okay, fine. Well, then, you will be next and as soon as we reconvene at quarter to, counsel.

MR. JONES: Quarter to noon?

DR. DUPRE: Quarter to twelve.

MR. JONES: Okay.

THE INQUIRY RECESSED

THE INQUIRY RESUMED

DR. DUPRE: Ready, Mr. Cauchi?

MR. CAUCHI: Sure.

DR. DUPRE: Please begin, Mr. Cauchi.

MR. CAUCHI: Well, as you know, I waited too long for this now, and I hope I have enough time to explain to you the problems you will have to go through during the last at least seventeen years. I say seventeen years because we have been at it since 1965, to try to do something about these people and to correct the situation.

Last week and during the last two years, you heard from a lot of specialists, a lot of high-educated people, and today you are hearing from the workers themselves, and I think it makes a lot of difference sitting in here hearing from somebody that can recall instead of somebody that can't recall anything.

Mr. Perkins and I started at the same time, and we were doing the same type of work. Mr. Pagnello, he was interviewed by the rehab team, and at that time there was a hundred and sixty people interviewed.

At that time that we started now, the number of our

5 MR. CAUCHI: (cont'd.) fellow workers is dwindling every week. There's not a week goes by that I don't have to go to a funeral of one of these ex-asbestos workers, ex-Johns-Manville asbestos workers, and the numbers of widows is dwindling very fast. (sic) Unfortunately, my car don't take enough people, because some of them come from far away and I brought as much as I could this morning.

10 The problem started from day one. The government of Ontario allowed the compensation claim in 1942 for an asbestos worker.

In 1942, an ex-Johns-Manville worker was granted compensation. Yet, in 1948, they let the Johns-Manville Corporation open at West Hill, with no guidelines.

15 The number...and the biggest problem that we had ever since I recall, for any worker that was contacted, with any disease, the biggest problem came from the occupational health branch.

20 As far as most of our people are concerned, the occupational health branch should be disbanded, or should be at least set aside an entire department from the compensation or from any government branch.

Management and their doctors knew of our health problems, but the workers and our doctors was not told of any changes in our x-rays.

25 I will come to the x-rays for asbestos workers later on.

It was only since 1973, and I can recall whatever I am saying, Mr. Chairman and fellow Commissioners, what I am saying, I have everything proof of it. And that's why I recall everything I am saying.

30 In 1973, I was the health and safety chairman in the plant, and after the group of workers were complaining about

5 MR. CAUCHI: (cont'd.) their health problems, I suggested to the government and to the company that after the x-ray, our physician and ourselves should be told - at least what changes is being done.

10 From 1973 on, the first report came in and pretty well most of us get a letter, the workers get a letter from the Ministry of Health saying that there is some changes observed in your lungs through the x-rays, but your doctor might be aware of it already, so check with your doctor.

For the rehab program, I'm going to touch on it a little bit now before I forget this, because I just heard you, Mr. Chairman, question Mr. Pagnello on it.

15 As for the rehab program, it was instigated by the agreement between union and the compensation board, and I can recall very, very well it was just as it was being done today, when the compensation people came to the plant and we met in the board room of the Johns-Manville Company, and for the union there was Mr. Ken Montgomery, vice-president at the time, and Robert Donahue, secretary, and myself as health and safety chairman.
20 For the company there was Mr. Bruce Machin, manager of the plant, Mr. Rollie Wilson, employment manager, Al Frank the safety man, and Audrey Baylis the nurse.

25 For the compensation board, the representatives were Dr. Charlie Stewart, Charles Coach - he is a rehabilitation services specialist - Larry Carr and Mr. Boyd - he was in charge of the Workmen's Compensation rehabilitation program.

30 I can recall as if it is being done again this morning, that when the compensation people gave us the list of a hundred and sixty that are eligible for rehabilitation - with dust effects - at that time, 1976, they were called dust effects.

In 1976 when the rehabilitation team came in and gave us the list, Mr. Bruce Machin stormed out of the room because

5 MR. CAUCHI: (cont'd.) he have no part of it unless he be given the names, and the union had no problem to agree to give management the names.

The reason for that was that there were some salaried employees on the list, and we said we have no problem to let the company know who is eligible.

10 So then we started to discuss the program with the company and the rehabilitation team.

15 As for the green cards, you asked about the green cards, the green cards, there were two sets - one kept by the government at Grosvenor, and one by the Johns-Manville Company. The nurse had a copy, had the index box or where to start, you go in there at that time. The mobile x-ray unit used to come, and you walk in, the nurse will find your green card and she hand it down to the x-ray technician on the truck, and in turn on the way out you give it back to the nurse.

20 So the company also had knowledge of these cards and had...they were entitled to keep these cards at the time. That's not the company doctor, the company nurse.

25 I want to go through these notes that I took this morning, first.

I can't recall anyone that took a rehabilitation program and was found a job by the WCB. I'm one of the earliest ones that come out of it, six years ago. I'm still waiting.

30 The last time I saw a rehabilitation officer was two years ago when you had the first hearing, and that's how I happened to see him.

As far as I know, from the eighteen to twenty people...there is more today, and I'll have the list this afternoon...from the eighteen and twenty workers that started the program from 1976 to 1981...because in 1982, 1981, September, 1981, there was another twenty that come out...only one found a job

5 MR. CAUCHI: (cont'd.) and the reason he found a job, he was upgraded at Durham College with me, and he took a trade and Durham College kept him on the job. That's the only one that I can recall.

Two other guys they went into farming with the help of the compensation board, plus still receiving rehabilitation money.

10 Another one that went on rehabilitation with me, he is still receiving the rehabilitation money and the government helped him out to operate a summer resort.

15 So what I'm saying here, there you have Mr. Pagnello waiting to get something and can get nothing, and somebody else... because Mr. Pearce liked the guy, he is still on rehabilitation and...they even paid his lawyer for making the deal and buying the summer resort.

I don't think that's fair.

20 The rehab program started similar to the one started in Elliott Lake for the miners. The miners, what they didn't realize is this - that the miners, when they had dust effects show in their x-rays, they were brought to the surface and that's how they rehabilitated them.

25 But at Johns-Manville when they come to us and Dr. Stewart questioned every one of us, and Bruce Machin, the manager at the time, that testified last Monday here, questioned Dr. Stewart, how are these people going to be rehabilitated, how are you going to find them jobs?

There was only one word said by Dr. Stewart - no problem. You can see today some of them still have problems.

30 But the point was made at that time when the rehabilitation program started that you don't go from a dust effects in the plant at Johns-Manville to a no-dust-effect in the plant. The program was started to get you out of the plant altogether....whether it's in fiber glass or thermobestos or

5 MR. CAUCHI: (cont'd.) wherever - out of Johns-Manville employment once and for all, and retrained for other employment.

Another problem that was questioned this morning in here - the re-examining of these people.

10 I know a man that was re-examined on the phone. He lives in Peterborough. They phoned him from the Grosvenor people. They said, Mr. Lynch, have you been sick the last five years.

He didn't know what it is. He didn't know who he was. In five years, he was re-examined on the phone with a question of has he ever been sick.

15 There is no timetable for re-examining ex-employees of the Johns-Manville Plant, from Grosvenor, unless you phone them and bug them like I do, for some people, they will never call you back.

20 Two years ago, Dr. Robert Elliot, then Minister of Labour, stated in the Legislature, in Hansard, that "family members were supposed to be checked again two years ago", but this has never been done .

I have spoke to the person that was supposed to check these people. That person is Dr. Fitzgerald. He is the Medical Officer of Health for Scarborough.

25 Two years ago he said he is going to do something about it. Today we are still waiting.

By the way, he is the person that was in charge of examining the first batch of people about five, or maybe six, years ago.

30 Another note that I noted this morning from the questions is, Mr. Pagnello, he was a foreman and he knew more what's going on behind the scenes than I did...though I doubt it... Johns-Manville built a ballpark next to the plant, right across

5 MR. CAUCHI: (cont'd.) The first notice that shows any deterioration in my lungs was in 1970 - "Linear here is prominent and no active disease, July 6, 1970." And it says unchanged in here for the next four years, except 1974 it says, "L brackets increased markings and no active disease".

You heard this morning what happen if you have active disease. You are going to get a box.

10 In 1975, before I went on rehabilitation program in 1975, "I feel your shadows are moderately wide and dense, but they are unchanged since 1972. Lung parenchymas show slight prominent linear markings, and no significant disease again".

15 It's not new for us to be appearing in front of a Commission or any labour body. In 1977, October 20, the group at the Johns-Manville Corporation, the workers, wanted an inquiry being held. A petition was presented to the then-labour minister, Bette Stephenson, and since four million Canadians suffer from respiratory ailment and that lung disease is the single greatest cause of absenteeism by illness, and third leading cause...I believe you have a copy of this...we requested that
20 the inquiry should be required to find out why management should not be held negligent by not informing the workers of the danger of working with asbestos.

25 Did the workers receive the proper report in regard to their health when physical checks were taken by the company doctor? Was the occupational health department that is responsible for keeping an eye on us workers passing on to us any changes observed when x-rays and pulmonary function tests were taken? Was the Workmen's Compensation Board treating the disabled workers that are affected by asbestos dust, in a fair and equitable manner?

30 This type of an inquiry is long overdue since thirty of our fellow workers have died receiving some form of

5 MR. CAUCHI: (cont'd.) from Sir Oliver Mowat High School. The whole thing was resurfaced and packed with asbestos dust.

I'm not surprised to see that, because I saw the same thing in Manville, New Jersey, In Merillo, Louisiana, in Wakegan, Illinois, and in Long Beach California. Two of these plants since closed, too.

10 But these two items, such as the ballpark, a few years from now if Johns-Manville will ever get the rezoning for building, that earth have to be redug - that asbestos going to fly all over the place.

15 There is a copy in here from Allen Grossman, the then-Minister of Industry, who refused to grant a subdivision permit near the ballpark.

I like to start, Mr. Chairman, by telling you something about myself, when I started there some years ago, we requested management to give us all the information from day one. It was no problem getting it.

20 I started there in 1953. Like I said, the same day as Mr. Perkins.

My lung conditions was, it said in here, A-1. Within three years, there was signs of deterioration in the lower lobes of the lung.

25 A year later, it shows improvement. Within five years, everything went by - everything cleared up - until 1965.

30 Now, I never found a doctor yet that I talked to that they tell you that if you have asbestos in your lungs, or deterioration through asbestos in your lungs, it's going to heal. But somebody at the compensation board or at Grosvenor stated that even though my lungs showed deterioration in 1956, in 1956, (sic) they were cleared up.

MR. CAUCHI: (cont'd.) compensation while some of them are still on the job at the Johns-Manville plant.

5 The petition was signed by four hundred workers, presented to the labour minister, October 20, 1977.

10 The list of dead and disabled has varied from who you talk to, but from my experience as health and safety chairman and from looking at the overtime list or the seniority list of the plant, I come up with a lot more numbers than anyone so far - including the occupational health branch and the Ministry of Labour.

I got the names of widows and disabled persons here if the Commission feels it would like to have copies of them.

15 I got calls from as far as Vancouver and as far as Newfoundland - exworkers wanted to know what was going on and how come they are not getting any compensation.

DR. DUPRE: Excuse me, Mr. Cauchi. You said that you have accumulated these names and numbers.

MR. CAUCHI: Yes.

20 DR. DUPRE: Have you shared those names and numbers with the Workmen's Compensation Board or Ministry of Labour? Have you given them all those names and numbers?

25 MR. CAUCHI: I tried, but every week there is like... two weeks ago, within the last three weeks, I was at two funerals. As you know, we are about the only people that come here with our own money and spending the money. I can't afford to come to Queen's Park every time.

I would love to. I would love to see Sheila (sic) Cox in here and saying that he is going to give us all the information because he got more information.

30 DR. DUPRE: But you have said that you have those names and numbers with you now?

MR. CAUCHI: I do, yes. I sure do.

DR. DUPRE: Would you be good enough to give them to us?

MR. CAUCHI: I will give you...

DR. DUPRE: We can certainly route them to those places for you.

MR. CAUCHI: Mr. Chairman, everything is in here. It's yours.

DR. DUPRE: Okay.

MR. CAUCHI: That's why we are here.

DR. DUPRE: Perhaps you might give them to Mr. Laskin at this time.

MR. CAUCHI: I already suggested...sure.

DR. DUPRE: Thank you very much. We'll consider that part of our records.

MR. CAUCHI: I'll keep them separate for you.

DR. UFFEN: By the way, the people on the list, do they all know that you have their name on your list?

MR. CAUCHI: Let me put it this way, Mr. Uffen, the first time that we met with Mr. Laskin in your office in here, we were authorized to organize a group for ex-asbestos workers, victims, widows and so on and so on, and we held a few meetings then, and we had a meeting about a year and a half ago with our legal advisor, at the union hall in Ajax, and all these people were present.

They all got a letter, acknowledged that these people have been represented in here. That's why some of them don't really bother to come in here, because they are too busy either at home or with their kids, or trying to make a dollar somehow.

I know a lady that has lost her house and is working for the Red Cross three hours a day just to make enough money to feed her daughters and send them to schools, because she couldn't get any compensation. Why? Her husband...we heard it last week in here...why? Her husband died only seventeen

5 MR. CAUCHI: (cont'd.) years after he started at Johns-Manville, with stomach cancer. Everybody tell you that the limit is set - twenty years. If you don't work twenty years in asbestos, you can't get stomach cancer - as if God said that.

When Dr. Nicholson was here, he says we didn't send McCracken the letter of twenty years - it means twenty years, as the Bible, we said it could take twenty years.

10 Yet this lady is still waiting for compensation, losing her house and she had got to work three days a week for the Red Cross to make some money to feed her kids.

Why? Because her husband only worked seventeen years at Johns-Manville. He didn't have twenty years.

I have all that in here.

15 What bothers me most is that these people died...you know, some people question the Johns-Manville Corporation. Let's face it, the Johns-Manville Corporation don't run Ontario. There must have been a conspiracy between the government of Ontario and the corporation, because the corporation was assessed for a compensation case, as stated by the Ministry of Labour, in 1942, for an asbestos victim. In 1942, an asbestos worker for the Johns-Manville Corporation, his widow was allowed compensation because he died of asbestosis. Now, forty years later, we are still talking about it, and who is to blame?

20 In 1947, I got a letter in here by Dr. Arthur Vorwood (phonetic), 1947: "In my profound grief over Don's sudden death on December 23, 1947, I find I must report the post mortem examination.

I believe that the cause of death was occupational in nature - specifically, asbestos inhalation".

30 This is 1947. "A complete pathology report may be obtained from Dr. John Zuljan of the Mesaba Clinic

MR. CAUCHI: (cont'd.) "in Hibbing, Minnesota."

This is 1947, the autopsy report. I tell you that asbestos was the cause of this man's death.

Another one here in 1907...in 1907:

"We have been told that there is something characteristic in the early stages of dust phthisis in the predominance of shortness of breath before physical signs become very obvious. Was that the case here? Yes. When this man first came to the hospital, he only complained of shortness of breath. We find out that at sixty-three, he has asbestosis."

This 1907, man! Complain of shortness of breath like Mr. Hano complained for years about shortness of breath.

Why I say there is a conspiracy, and there was a conspiracy, between the government and the corporation? I got Hansard in here of May 22, 1980: The resource committee report on compensation. I made sure that questions are going to be asked with regard to the rehabilitation program.

Page sixteen, inquiring about a man that was refused rehabilitation: "Let me get into specifics because the information you have there is problem, and I would like to see if there would be resolvment of it. I am referring to Mr. John Tops. The claim number is 10293291. There is a further claims number of 11177239. I am hoping these are correct numbers. They were given to me by our research.

Mr. Pearce, the rehabilitation officer, answered: 'Mr. Vanhorn, it is extremely difficult in my role as a rehabilitation counsellor specialist to deal in specific cases. I am sure you appreciate that'."

5 MR. CAUCHI: (cont'd.) Then again he goes back on page thirty-two, the frustration we had since 1976, when the program started. Dr. McCracken was asked about a man that is looking after Grosvenor Street. Dr. VanHorn asked the Minister of Labour what his name, and the curiosity, could you tell us his name so that his name could be divulged.

10 Dr. McCracken replied: "I don't see any reason why not. His name is Dr. Vingilis."

15 Now, when this question cropped up at the Legislature, we were always told that Selikoff and his group in New York don't really know what they are talking about, and we were told that the only man in Ontario that could read asbestos workers' x-rays was Dr. Vingilis.

20 In fact, it is confirmed in here in the Legislature by Dr. McCracken, thirty-nine: We are talking about these people that...the risk area and no-risk area. Dr. VanHorn was questioning the minister in there for what reason again that Mr. Pearce said the man has never been working in the risk area.

25 The risk area was never mentioned when the rehabilitation program started. It was a risk area from one corner of the plant to another when we first started there in 1953 and 1948. It was the same until 1973, when the then-Minister of Labour, Dr. John McBeth visited the plant at eight o'clock at night when a man you had in here two weeks ago..I find him very helpful...a lot of people don't think much of him, but me, as a person that had to deal with him, I find Jim McNair as a very helpful man to help us clean the place every time...Jim McNair, he testified, I believe, a couple of weeks ago and his capacity today is the industrial safety management branch for the Ministry of Labour. I think he is the chairman of the group, unless he retired since then because he is dying to quit. He's sick of it.

30

5 MR. LEDERER: I don't know anything about the last comment, but as I recollect it though, Mr. McNair indicated that his present position was that he was a special advisor to the assistant deputy, as I recall it, or perhaps the deputy.

MR. CAUCHI: At the time he was in the industrial safety branch, right?

MR. LASKIN: Industrial...right.

MR. CAUCHI: For the Ministry of Labour?

10 MR. LASKIN: That's correct.

MR. CAUCHI: I found him very helpful, I'll tell you. Take nothing away from a man that tried to help.

Now, at the Legislature hearing, Mr. Davidson, the member for Cambridge:

15 "Is it true, as we heard, that there are three or four who to this date have never received any form of rehabilitation whatsoever, but have spent the last couple of years sitting at home?"

20 I want you to look at me. I just finished saying that I been sitting at home for six years. It was question to Mr. Pearce whether these people are sitting at home - this was four years ago.

25 Mr. Pearce's answer was: "I would not agree with that. There have been interrupted periods of that group that you mention back and forth, but to say that they have been sitting continuously at home over a period of time such as you have mentioned - it's not so."

30 I haven't seen that guy in three years. The last time I seen him was over in your office when we had the first hearing. And he is telling the Legislature people, these are the people that try to run the province, yet a rehabilitation officer working for the Compensation Board is saying that I wouldn't agree with that.

MR. CAUCHI: (cont'd.) "There have been interrupted periods of that group that you have mentioned, back and forth. But to say that they have been sitting continuously at home over a period of time such as you have mentioned, it's not so."

One of the staff says, "What he means is, are they in addition to the eighteen?"

There was eighteen at the time.

"No."

"Including in the eighteen are there in fact people who really have not received any form of rehabilitation, but have pretty well been left sitting at home waiting for something to happen?"

Mr. Pearce answered: "No."

I would like to mention to you, Mr. Chairman, that from the eighteen people that took the rehabilitation program, I was one of the first ones, one of the eighteen, and two of us, only two, they took the rehabilitation program through educational upgrading. The rest were never sent anyplace, they stayed at home, nobody ever told them you have to do this or you have to do that.

There was never rehabilitation done for these people. When it was stressed again by Mr. Davidson that, "You tell me, then, you are taking exception to the Canadian Chemical Workers Union position that there are in fact about those eighteen people who have never yet received any form of rehabilitation and are sitting at home, particularly the president of the local, who had commented specifically?"

Mr. Pearce answered again: "I would find that difficult to reply to."

5 MR. CAUCHI: (cont'd.) I would point out to you, Mr. Chairman, another problem that we faced with these people after we took the rehabilitation program, too: The people so affected with the dust effects were called up to the Howard Johnson, as Mr. Pagnello tried to explain to you, and at that time there was Dr. Stewart, Charlie Coach...Mr. Pearce came later to this...a fellow by the name of Charlie Coach, and Larry Carr, the president of the union, Charlie Neilson, and the employee affected.

10 When the question popped up of what we do after we come out, after we come out of the plant what are we going to do, they said the program would last for a year, we review it every year. But there will be no problem. Jobs will be found. We got enough placement for you people.

15 They said, Eddie Cauchi, what would you like to retrain for? I said, I only have grade six education back home, but I'm willing to retrain for industrial safety man.

20 He says, there will be no problem. You already know that job, you've been on it for fifteen years.

I went to Durham College, I got my grade eleven and that's it. They cut me off. They said, you go find a job now.

I said, what are you talking about?

25 You got to find a job. We retrained you. We put you through school.

DR. UFFEN: Who told you this, the Durham College people?

30 MR. CAUCHI: No, no, no. The Compensation. Durham College had nothing to do with me. Durham College, all they did is rehabilitated me. They retrained me...upgraded me to grade eleven, in nine months. I made it fast.

DR. DUPRE: They had you in there for nine months?

MR. CAUCHI: Nine months. I spent nine months to
5 get from grade six to grade eleven. The teachers were very happy
that I took the program and to see me go out of there fast, I'll
tell you.

DR. UFFEN: I guess you were called a mature student.

MR. CAUCHI: Yes, yes.

10 But through co-operation with the teacher and
myself...I wanted to learn so bad because I always wanted a job
with Mr. McNair, but unfortunately I could never get to it.

But when I came out of there, Mr. Chairman, when
I came out of that program, they said you go find a job now, and
they cut me off.

15 I went nine years on unemployment insurance. I don't
know what to do. I tell you, for nine months I was desperate.

DR. DUPRE: Was Canada Manpower in any way involved...

MR. CAUCHI: No.

DR. DUPRE: ...in financing your training?

MR. CAUCHI: No. Strictly compensation.

20 DR. DUPRE: I see.

MR. CAUCHI: There is two right now at Durham
College, there is two right now. One of them is sixty-three,
being rehabilitated for an IBM machine operator. Sixty-three!

25 DR. DUPRE: Nobody ever suggested to you after your
nine months, did anybody ever suggest to you after your nine
months that you might perhaps inquire at a Canada Manpower center?

MR. CAUCHI: No.

DR. DUPRE: To see if you might be eligible...

MR. CAUCHI: No.

DR. DUPRE: ...for occupational training?

30 MR. CAUCHI: No. I was not eligible. My nephew
is head of the Manpower in Oshawa, and I was not eligible.

DR. DUPRE: So you knew...?

MR. CAUCHI: Yes.

DR. DUPRE: You were told? You knew...

MR. CAUCHI: Yes, on the side. Yes.

DR. DUPRE: Okay.

MR. CAUCHI: The deal was...when I brought this up to the arbitrator, Mr. Chairman and Commissioners, I appealed the case and I won the case because I had a meeting again with Mr. Starr, at the time he was chairman of the board, and two of his men up there, and when we discussed the program, and since I was one of the originators of the program and the deal was to rehabilitate us and find us a job, I mean the compensation and rehabilitation team to find us a job - not us, because they have data coming in, they have a computerized system of all the data of jobs.

In fact, last week I was looking at one of these computerized data, but...but, as Mr. Starr stated in here, there is only one percent of the disabled in Ontario that are hired by the government of Ontario - only one percent of the disabled in Ontario is hired by the government of Ontario.

Unfortunately, the computer when it comes in about these job availabilities, there is no government jobs. And like Mr. Pagnello said, I tried. I was not told that 'you worked at Johns-Manville'. The minute you put your application in, you don't even get a medical.

They said, oh, twenty-five years at Johns-Manville? Yes, we'll let you know if we need you.

There is no way today they could let you know that because you worked at Johns-Manville you can't work in here. The Human Rights and you mentioned every other thing, the Bill of Rights and the new Constitution, nobody is going to tell you that, but nobody is stopping them by rejecting your application or

MR. CAUCHI: (cont'd.) putting it at the bottom of the heap - especially with the labour market today, two million unemployed.

This happened to me during the nine months that I was waiting for rehabilitation.

I would like to say to you, Mr. Chairman, what I said the first day you opened the hearings: Does this Commission have the power, or obtained the power since the first time I suggested that you obtain power, to lay charges?

DR. DUPRE: The answer to that is no.

MR. CAUCHI: No.

DR. UFFEN: Mr. Cauchi, I am interested in the rehabilitation proposal and your sojourn at Durham College. Could I ask you another question or two about it?

MR. CAUCHI: Go ahead.

DR. UFFEN: I admire your ability to get through five years of school in such a short time, but did they also give you any particular trade qualifications so that at the end of the program you were qualified for some new trade?

MR. CAUCHI: Well.....my kind of work at that time when I left the employment there was a maintenace group leader.

DR. UFFEN: Yes.

MR. CAUCHI: I was a group leader, and I live about three meters away from General Motors and at that time they were hiring at sixteen, seventeen dollars an hour. I put my application, but my application was rejected.

So I couldn't see me going for a trade. What I was more interested in was a government job.

DR. UFFEN: Did you get a diploma of some kind from Durham?

MR. CAUCHI: No, they won't give you a diploma. They just give you a certificate that you pass your grade eleven, and all that, you know. A diploma of some kind, yes...if you

MR. CAUCHI: (cont'd.) want to call it a diploma.

They knew about it. The Compensation people knew
5 that I got my grade eleven...even though I only saw the
rehabilitation officer once during the nine months I was in
College retraining - the rehabilitation man only saw me once
to tell me that he is taking over from the other guy.

Then I saw him after nine months when my term was
up and I passed and, like you say, I got my paper and I passed,
10 and he says now, Mr. Cauchi, there will be no more compensation
money coming to you, you are on your own, you better find a job
or you going to starve to death.

I might mention, too, that during that time the
company was not very happy with the rehabilitation program. The
company and the Compensation Board were very much involved with
15 the rehabilitation program in trying to stop it.

Dr. Stewart at that time tried his utmost to stop
the rehabilitation program because he found out that it's not
going to work at Johns-Manville like it did work at Elliott Lake.

See, Johns-Manville, I say again, people were
20 supposed to get out of the plant...not from one area to a safe
area...right out of the plant.

At the mines at Elliott Lake where he was familiar,
it was just to get them out of the mine and put them on the surface.
That was easy, but it wasn't that easy in here, especially when
people like me wanted to get education.

25 There was other people that wanted to get education,
but were never given the chance. They are still sitting at home
doing nothing, except sometimes they go crazy. I know, because
I hear the phone sometimes. They call Eddie Cauchi.

30 1918 - the United States department of labour...
that's 1918, that's about thirty years before Johns-Manville
opened in Toronto: "The number of men employed in trades and

MR. CAUCHI: (cont'd.) "industries involving exposure to asbestos dust in the United States is unknown. Aside from the mining of asbestos where asbestos is rather limited, there are numerous processes involving the conversion or the remanufacture of the materials which are distinctly more serious in their effects to health and longevity.

Asbestos weaving and spinning is described by Methosie (phonetic) on the basis of observation in Bohemia, where the conditions were found to be decidedly unfavorable. For this country our information is very limited, although the mining of asbestos used is very large.

Its free-resisting properties have led to its intensive employment. On account of its non-conducting properties, it is extremely employed by electricians and also in the construction"...

This is a document put out by the Ministry of Labour, department of labour in Washington, 1908. In Ontario, in 1982, we are still discussing it.

Last week you had some questions to Johns-Manville personnel and there was doubt whether Johns-Manville personnel was involved with the Scarborough Board of Health or Scarborough Council.

This is taken from the Scarborough Mirror, March 21, 1975: The council asked for a study of asbestos, which involved Mr. Raitze, director of safety environment quality for all seventy Johns-Manville plants, and Dr. Ian French, Scarborough chairman of the board of health.

Now, on February 20, 1978, the Johns-Manville Corporation which, in view of the United States judge, deliberately

5 MR. CAUCHI: (cont'd.) failed to alert its employees and customers to known health hazards associated with asbestos from 1930 until well into the 1960's..the company now faces lawsuits from its United States employees totalling nearly two billion dollars.

10 There was some discussion about the nonsmoking in that plant. The no-smoking ban in that plant never started before August 9, 1980...1980, on August 9th. The no-smoking in transite pipe area - you got a copy of that - was established in 1975 as...it was a token. It was not enforced.

15 The only person in that one-year trial of no smoking in the transite pipe area that was penalized was Eddie Cauchi. I got three days off for smoking a cigar in the plant.

There was only one man in the whole year of enforcement of no smoking in the transite pipe area. In fact, to make it clear, I got it twice. I got six days off without pay.

20 The Weiler Report talks about the third party claims about industrial disease. I hope that the time when you people, this Commission, will make the report, I'm sure if you study the Weiler Report very carefully...I had discussions with Mr. Weiler and it was agreed upon that industrial workers such as we heard one this morning in here when her husband was receiving fifty percent and then all of a sudden he is dead and there is nothing coming anymore....I don't know how to deal with that problem. Whether, you know, you could be getting fifty percent and get hit by a car, so there goes the fifty percent because the car hit you.

25 Yet, the fact remains that the man was fifty percent disabled. You can't take that away from him. During his employment, he was still fifty percent disabled. It's not the car that made him fifty...the car finished him.

30 So I hope that when you people make your report

5 MR. CAUCHI: (cont'd.) you bear in mind that these widows that are not getting a cent after their husbands were bringing home some money, because they were assessed between twenty and fifty...I had one assessed at seventy-five percent. If that guy dies tomorrow, his widow won't get a cent because he is not a hundred percent disabled.

10 We buried a man last week. We lost an appeal hearing for him because of the same thing - shortness of breath, and he died with a heart attack. The last three that died, they all died with a heart attack. Yet this man was given temporary compensation for a hundred percent...but they call that temporary. Once you kick the bucket, the temporary is going to eliminate his widow's any future payments from the Compensation.

15 If he was getting thirty percent definite and he was sent a letter by one of the legislators telling him how lucky he is...you are a lucky man, you are getting thirty percent, last year you were getting only twenty percent...that's after he was examined by Dr. Vingilis last year. He considered himself lucky for getting that, for being disabled an extra ten percent.

20 This is the type of correspondence that goes between widows, between disabled people and the Compensation Board - you are lucky, you are an extra ten percent disabled this year so you are going to get another few cents.

25 But if you die, you don't get a cent.

30 I also take exception to the Johns-Manville brief. On page three they say that, "temporary compensation benefits should be based on ninety percent of pre-injury net disposable earnings instead of the present base of seventy-five percent. This proposal is similar to the ninety percent net earning. The White Paper published by the government of Ontario amply supports the position of why this

MR. CAUCHI: (cont'd.) "formula should be changed."
On page seven, then, they go and say 'employment
discrimination'...

DR. DUPRE: Could I just ask you which J-M brief
you are referring to?

MR. CAUCHI: October 13, 1981, Mr. Chairman.

DR. DUPRE: Thank you. Okay.

MR. CAUCHI: I totally take exception to page
seven, the whole page in there.

DR. DUPRE: I just wanted to make sure I knew
which brief.

MR. CAUCHI: Okay. There is three of them, I
believe. That's the right one, Mr. Chairman.

This is what I mentioned before about one of our
fellow workers that had seventeen years of service, but he was
disallowed.

Finally, she went to Lincoln Alexander and the
chairman of the Compensation Board, and that's the kind of letter
he sent her.

"Mrs. Fred Rozema: Since writing to you in March,
I have had the opportunity to review your husband's
file. I know that the Honourable Dr. Elgie, Minister
of Labour, corresponded with you early in March. I
must regrettfully advise you that I have no
additional comments to make.

I can only confirm that one of the minimum
requirements for compensating your husband's type
of disability has been linked to the employment.
It would be a latency period of twenty years.
As you know, your husband worked for J-M only for
eleven years."

When they went to the arbitration hearing, they

5 MR. CAUCHI: (cont'd.) accumulated an extra six years of overtime. That's how the seventeen years came into being. He actually worked for eleven years, but with the overtime and everything it came to about seventeen years.

"I am sorry that I cannot be of any more help to you at this time."

I got Mrs. Perkins in here. You heard from that before.

10 In 1976, November 18, 1976, last week you heard about the coveralls, the Scarborough Board of Health, the washrooms and so on, how much money they were going to spend and everything.

15 "As for November 18, 1976, the recent deaths of three former J-M employees and a Whitby man has led the union to call for better lung and stomach cancer detection.

With the kind of money now being paid by the Workmen's Compensation Board, a man has to work until it's almost too late."

20 We wanted a ruling that they should start the sputum cytology, and that's not the same as they used to take it in Ontario. Some three years ago the union sent a delegation of three people to talk to some specialists in the States, and we discussed the Sacimono (phonetic) technique, which had liquids in the jar, and here you got a dry bottle and that's it.

25 In this case, even Dr. Kotin admitted himself that's what they use in the Long Beach, California...they had to go to court to get that...Long Beach and Lompoc, California, and Wakegan, Illinois, they use the Sacimono technique, with the liquid.

30 As far as I'm concerned, it was only done once in Ontario, and I think the union took it upon themselves. It's after my time.

MR. CAUCHI: (cont'd.) During the last two years you heard a lot of pro and con about what kind of fiber and what kind of type of fiber do the most harm or what harm.

I got a letter here by a man who lost his brother, his father and his uncles, that says:

"An article in New Scientist Magazine, written by Dr. Christopher Wagner, deals with the safety of asbestos, and ends by saying:

'our present experiments indicate that irrespective of the mineralogical nature, all fibers less than point five microns in diameter may produce tumors in the pleural cavity of rats. Thus manufacturers may be warned of the increasing hygiene risk as the fiber diameter is reduced. In short, the smaller the fiber, the bigger the health risk it presents'."

In 1972, August, 1972, when I was health and safety chairman at the time, we took...that's by the way, exactly one year after Dr. Kotin left Dr. Selikoff...we took it on ourselves that we had a meeting of all the local unions, even though we were not the same union, but we have a joint union council, whether you are a Steel Worker, a Chemical Worker, an Auto Worker, Oil Worker at the time...we had a meeting in Wakegan, Illinois, one of the Johns-Manville plants, and we invited Dr. Selikoff.

August, 1972, Dr. Selikoff was showing us x-rays in here of how it was affecting the workers at the Manville plant in New Jersey. That's August, 1972.

Within the past several months there has emerged through several lawsuits in the United States evidence about the way in which the major asbestos companies suppressed information on the dangers to human health from asbestos exposure. The

5 MR. CAUCHI: (cont'd.) information is now before a congressional committee, and a special meeting of lawyers and doctors has been convened in New York to discuss the findings and explore legal strategy.

In 1980, during the congressional hearings to limit the exposure of asbestos in the States, there is a chance it won't go through. This word was spoken by Dr. Parkinson.

10 Why? Because the large corporations that mine and utilize asbestos, such as Johns-Manville and Raybestos Manhattan, and Cassiar Mines, have complained they would be forced out of business.

15 Dr. Tom Mancuso, another University of British Columbia occupational health professor and pioneer in the field of occupational cancer has said: "Achieving the current standard was a major task."

He predicted, however, that asbestos-caused disease would increase in the future.

20 1978, March and July, there were so many people concerned in the States that we convened a meeting about Johns-Manville workers, whether in Canada or the States, and a demonstration was held in front of their buildings in Denver, Colorado.

There were representatives from every local. They were facing a brick wall the same as we are facing in Ontario.

25 At the same time, a survey by Dr. Selikoff and his group, that was done in Thetford Mines, Quebec, found out that sixty-one percent of their workers...sixty-one percent of their workers...had lung damage.

30 One of our workers was told in February that his level is below the acceptable limit for compensation, that he is not even eligible for a percentage of compensation. Yet, by August

MR. CAUCHI: (cont'd.) he was buried.

Today, his wife receives full compensation because of the autopsy report.

What I'm saying is that the man was clear, he was given a clean bill of health six months before he died.

This is why I said our biggest problem always was, and still is, Grosvenor.

DR. MUSTARD: Could you tell me what the autopsy report showed?

MR. CAUCHI: At the autopsy?

DR. MUSTARD: Yes.

MR. CAUCHI: I tell you, I would love to see these reports, you know, but I don't want to be that personal. I have some autopsy reports, you know, I have some because they give it to me. Some of the widows don't want to see them. They just give them to me and I hand them over.

DR. MUSTARD: I guess what I was trying to get at is that six months previously he had been given a clean bill of health?

MR. CAUCHI: A clean bill of health, yes.

DR. MUSTARD: And what was the cause of death? Do you remember that?

MR. CAUCHI: Asbestos. Pulmonary fibrosis. Pulmonary fibrosis. Before that, I will show you letters in here that I receive every year from the...before that, he got the same letter as I got, that there is changes, but nothing to worry about, there is no disease.

DR. DUPRE: That cause of death was accepted by the WCB as validating his claim?

MR. CAUCHI: Yes, yes. After we had to push it.

DR. DUPRE: And all of the negative reports that that individual had gotten before, they came from the WCB...

MR. CAUCHI: Grosvenor.

DR. DUPRE: ...or they came from...

5 MR. CAUCHI: Nothing comes from WCB, Mr. Chairman.
Everything comes from Grosvenor.

They also, today, like...I don't know if they do
it to everybody else, but I know they do it to me because Vingilis
knows me and so does the new man today...they send my reports to
the doctor, to my physician.

10 All they send me is that there is no changes in
your...that's all. But the actual report of the type of illness
I got, I wouldn't know what it is, so why send it to me. I like
to send it to my physician. All I want to know or we are interested
in, how much money we are going to get for being disabled or for
15 being sitting at home doing nothing.

We been fighting for the kind of changes you are
dealing today, for the two fiber and we brought Dr. Nicholson here
in 1976, and the government at that time, the late Minister of
Labour, Dr. Bette Stephenson, says she is going to change that.

20 I get the widows in here...one, her husband died
February 12, 1975, and the other one died July 23, 1976, they
still have no money as of today...Mrs. Rozema and Mrs. Sypher.

But what I been saying and what some of our people
have been saying, it was...it came out in the open in an article
in the Star of 1975, by Jack Hollinsworth. Now, Jack Hollinsworth
is the Board information officer for the WCB.

25 "The Workmen's Compensation Board Wednesday put a
freeze on all further information about asbestosis
claims of Raybestos Manhattan of Canada."

At that time we tried to question them in the
legislature about how many compensation claims and how many people
30 that are showing asbestos dust effects through their mobile unit,
and the Compensation Board, through Jack Hollinsworth, the Board

MR. CAUCHI: (cont'd.) information officer, put a freeze on. They wouldn't give nobody any more information, even to the unions.

Now, to go back about the rehabilitation program, since most of these people were having problems, we kept pushing it in the legislature, and as you heard during the last two years, Johns-Manville is not in the business of manufacturing asbestos anymore.

Therefore, they can't tell you we are going to take you out of the asbestos area, out of the plant. Today they could tell you, well, we'll take you out of the asbestos plant and put you into the thermobestos or the fiber glass, at that time.

When we questioned the Minister of Labour, Dr. Elgie, because of workers' unique position, the Board will allow those workers who are disabled in some way into the WCB special job rehabilitation program. Normally the Board program accepts only those people who have suffered some disability and remain in a risky situation.

Johns-Manville, already strikebound, announced Saturday it would close half the plant.

So Dr. Elgie said, this puts some of the workers in an impossible situation because they are losing their jobs and at the same time losing claim to the risky environment that would entitle them to the WCB rehabilitation program.

Now, these people, even after the strike was settled, it took them until September of last year to get into that program, and some of them are still waiting to get into the program, as you heard from Mr. Pagnello this morning.

They never come around to the late Mr. Hano to put him on rehabilitation, and because of that his widow, as you heard today, couldn't get a cent.

5 MR. CAUCHI: (cont'd.) In 1980, April 4, 1980, Dr. Elgie stated in the legislature that, "The relatives of workers at Scarborough pipe manufacturing company with a high incidence of deaths from asbestos-related disease will be trained as part of a provincial study. At least thirty-two people have died..." and on and on and on.

10 But this was stated on April 4, 1980, that the relatives of these workers are going to be reassessed.

July 4 or 5...July 4, yes, July 5th, we are still waiting for the people to be reassessed.

15 But the end of 1980, Johns-Manville in the States had a total of five thousand and eighty-seven asbestos suits brought against it, up from two thousand, seven hundred and seven cases at the year end of 1979.

20 Unfortunately in here...and I say unfortunately because we have a better system, like you heard last week, and maybe you, through your research people, find that already...we have a better system than they do, because we don't want to hassle. That's why the Compensation Board was created. We don't want to go to litigations for five, six years, to get the same runaround like the people in Wakegon and Rainy River are getting in there. We can't wait six years and seven years. We want compensation right away.

25 But unfortunately, we are not getting it. Therefore, that's why the people in the States are suing the corporation, so they could get their due, what's coming to them.

30 It never compensates for the loss of a member of the family, but at least you could have something to tell your kids - here, you've got a roof over your head, or a loaf of bread,

Some of these widows...I know, I could vouch for them, that as soon as their husbands packed it in they went into

MR. CAUCHI: (cont'd.) real hardship.

5 Some of the workers that unfortunately had to leave employment - some because they were laidoff, some because they were too sick to stay in the employment picture - they were told that they were eligible for rehabilitation, they were told that they were suffering from dust effects, but yet up to today they never got a cent from anybody yet.

10 The largest...the nation's largest asbestos company had a policy until 1972, of not informing workers at the California plant when their chest x-rays showed early signs of asbestos-related lung disease, according to the sworn deposition of a retired manager. That was the hush-hush policy at the Johns-Manville Corporation, according to Wilbur Ruff (phonetic) 15 sixty-six years old, who held the management position at the company asbestos facilities in California, and Manville, New Jersey, between 1963 and 1974. In a sworn deposition, April 9, Ruff said that Johns-Manville did not want to talk about these things and get employees upset or others upset 'until we knew our ground', and that's one of the reasons why I call it a 20 hush-hush policy.

This is from the Washington bureau of the Washington Post.

1975 - talk about the washrooms, talk about the cleaning of the place. In 1975, we sent a letter to the Honourable Bette Stephenson, Minister of Labour, Queen's Park:

25 "Dear Madam Minister: The Oshawa and District Labour Council are very concerned with the plight of Ontario workers who come into contact with asbestos and silica in their work, and particularly the workers at the Johns-Manville plant at Port Union. 30 despite recommendations from the workers, conditions are bad".

MR. CAUCHI: (cont'd.) "Bear in mind this is 1975, and the situation warrants your immediate attention. Asbestos or silica workers who have a compensable chest disability should not be required to return to the same workplace, as this accelerates the disease and eventually the worker has to retire at a hundred percent disability. The worker should be removed from the workplace. Asbestos-related cancer or disease should be compensable the same as industrial chest disease."

By the way, by that time, until that time, 1975, asbestos workers were not compensable at that plant. As far as I know there is only one death that was compensable, for silicosis.

As you can see from your Ministry of Labour reports, that the asbestos workers were being given x-rays from day one - like when I started there, from 1948 until a certain date, I come to that later on, we were never tested for asbestosis. We were tested for silicosis.

Then after that period of time, we were tested for both asbestosis and silicosis, but one of the fellow workers that died within the last two years, he was the only one from the group that was getting compensation for silicosis and not asbestosis, because the term asbestosis was never used by the compensation people.

We recommended to the minister at that time that a worker should be able to sue the negligent company. We recommended a double locker and proper wash and change rooms should be mandatory, a proper, sufficient number of portable vacuums should be provided instead of using the usual brooms, all asbestos scrap and dumping areas to be covered with topsoil and so on...this was never done before 1976...paper covered asbestos bats or bundles to be banned completely, and warehouse

MR. CAUCHI: (cont'd.) areas to be walled off, all asbestos workers to be supplied with coveralls which should be cleaned on the site and not at private cleaners outside.

These were recommendations by the Oshawa Labour Council when I was vice-president, to Mrs. Bette Stephenson, 1975.

In 1976, Dr. V. Tidey - he is occupational health protection branch, community health standard division:

"Dear Dr. Tidey; I have been in contact with Dr. Fitzgerald of the Scarborough medical board several times re double-locker system, washing facilities, the ban of blue asbestos."

This is February 2, 1976. I believe he wrote to you on January 7, 1976.

As you know, we were more or less promised that double lockers and washing facilities would be installed at this location by the end of 1975. However, due to my suspicious nature and dealing with this company for years, I started to delve into what was happening here re lockers and washing facilities, and discovered that up until last week the **funding** for the project has not been released from J-M headquarters at Denver, Colorado.

It seems to me that you and your department are being very, very lax when you do not follow up what this company promised they were going to do.

Why does your department not move in and fine or jail this company for negligence and mistreatment, as they certainly were.

Or do you feel that the problem of workers carrying home asbestos fiber is not important anymore."

Now, this was given personally to Dr. Tidey on

MR. CAUCHI: (cont'd.) February 2, 1976, by myself.

5 I heard some testimony last week...I tried to find the pictures, but I guess they went away to Montreal...about the code of good practice, the responsible use of asbestos fiber as individual and elective commitment of asbestos fiber producers.

10 This is a code of good practice by the Johns-Manville Corporation, J.R.M. Hutchinson, dated...it doesn't say the date in here, but it was presented at the symposium here that was held on the 25th, 26th and 27th in Montreal, to all the delegates there:

15 "A code of good practice". At the same time that we got the code of good practice, we got pictures coming out of India, Singapore and Mexico showing the same type...if you take a look at these pictures that are coming out of Mexico and India and Singapore, and now I got suspicions that Zimbabwe is going to be their next step because the machines are going to Zimbabwe...see, they have the amosite fiber in there. They would use it somehow, and I guess they are overpopulated, so killing a few thousand in there won't matter.

20 But if you could see those pictures that's coming out of Mexico and India, it's exactly the same type of picture that you would have taken here at the Johns-Manville plant from 1948 until, I would say, 1963/1964, because 1965 we went on strike for some protection.

25 The first test that was done on the families of asbestos workers was done with the auspices of the Grosvenor people. But it was done at the Scarborough Town Hall. In charge of it was Dr. Fitzgerald.

30 "After the test was done, no cases of asbestosis or other asbestos-related illness have been found in tests of families of workers with at least twenty years' service, Dr. Fitzgerald said last week. We have no cases of asbestosis in

MR. CAUCHI: (cont'd.) two hundred and forty people that was processed."

5 "Symptoms of asbestosis, scarring of the lung, generally include a shortness of breath and chest pains, if severe asbestos".

10 But at the same time that he said that, now he already made the statement that nobody is sick, nobody was found abnormal, at the same time he said that these tests are going to the States for further study by special people. This is after he made the statement that nobody is sick, so I guess the people that took the tests could rest in peace.

15 On March 19, 1975, I attended a Scarborough Board of Health meeting, because it's in the Municipal Act that the municipality is responsible for the municipality, for the death certificates, on and on and on.

20 There was a member of this board that was very much concerned. She was representing the area of the Johns-Manville plant. And one of the resolutions was to ask Ministry of Environment and Health to consider the banning of the use of asbestos in Ontario.

Now, another resolution requested the Ontario Ministry of Labour to make certain safety measures compulsory.

25 This would include the wearing of protective disposable coveralls, regulated air filtering respirators and the taking of cleansing showers and change of clothes before leaving work.

Now, we have testimony here to the contrary, that these things were available as far back as Mr. Machin could remember. If they were available, why would the Scarborough Board of Health recommend in 1975 that it be done?

30 In 1975, when Dr. Kotin was here, we held a symposium and the Scarborough people and the area people were very

5 MR. CAUCHI: (cont'd.) concerned that the dust readings were way above limits, and Dr. Kotin sent his people over there to speak to the neighbors.

But what really upset me most is, when Dr. Fitzgerald, he was deputy medical officer at the time, and now why I keep mentioning this man, because it shows you that he was against any help for the workers at that plant, from day one.

10 He told the members of the audience, which was packed...and I have tape of this...in 1975, February, that:

"I am not concerned, said Dr. Fitzgerald. I am ignorant of the real truth, until I find out I'm not going to get too excited.

15 Last Friday, Dr. Fitzgerald turned over to Scarborough Mayor, Paul Cosgrove, a report on air tests made at Sir Oliver Mowat during two weeks in October.

The report, by Dr. Ray Cousin of York University, said three samples taken showed under samples taken (sic), but ten showed above the limit."

20 Even these people were showing Dr. Fitzgerald that there was something wrong there, and the mayor at that time, Paul Cosgrove, was very much concerned.

Dr. Fitzgerald says, I am not concerned, I am not going to panic.

25 The reason I said that, because he came, I believe, when you first opened the hearings, and he said a few words - never said very much - but I hope he will be back here because I would like to question him.

30 Asbestos levels went over the limit as far as Wednesday, March 25, 1977. The guardhouse monitoring station registered eight air samples exceeding the guideline, or seventeen percent of all samples. This is Wednesday, March 25, 1977.

5 MR. CAUCHI: (cont'd.) You have witnesses in here from the environment group. You see, at the time that was a disadvantage for us. We had to deal with three ministries, three departments - the Ministry of Health taking x-rays, Ministry of Labour enforcing the law, Ministry of Environment taking the tests.

10 By 1975, the then-Minister of Labour, the Honourable Bette Stephenson, merged these three departments together, and we asked for the results of the test that was done by the government people - the first done, ever been done.

The workers were never aware of the tests unless they were nosy, like Eddie Cauchi, and had to go someplace to get the results.

15 During 1975, the Canadian Johns-Manville plant was visited ten times in one year by the industrial safety branch. Four of these visits were made jointly with the occupational health branch.

20 On the initial 1975 visit, on February 6th, fourteen directions were left...1975 visit, February 6th, fourteen directions, of which six were related to asbestos exposure.

The latest inspection on December 3, confirmed that all outstanding directions had been met.

25 Now, I would like to advise you of how these used to be met. At the two pipe forming machines, there were considerable debris, but the machines were not in operation at the time of the visit.

At number two and number three, to the hydro tester, some dust was coming off everytime the pipes hit each other, so no control has been provided for this dust and excessive amounts have accumulated at the back of the machines.

30 But this is how they used to come up with the standard...at the two pipe machines there were considerable debris,

MR. CAUCHI: (cont'd.) but the machines were not operating at the time.

5 So there is sixty machines operating during the visit by the Ministry of Labour or the Ministry of Environment test control people, half of the machines are not in operation today.

10 DR. DUPRE: Mr. Cauchi, maybe I should ask you at this point how much more time you are going to need, because we will be glad to accommodate the schedule for you.

MR. CAUCHI: Could you? Well, if you want to go eat, I'm all for it, because I just had two cups of coffee with your milk powder up there. I could use a good cup of coffee.

15 DR. DUPRE: Could I simply propose this to you? We will reconvene around quarter past two, but then at this point, of course, Mr. Jones, is scheduled, and then we have Mr. Ublanski, but we can put you...also Mr. LeFebvre...but we could perhaps, to suit the convenience of the other three as well, we can slot you back into the schedule around three-thirty or four, or whenever we are finished with the others.

20 Would that be all right?

MR. CAUCHI: That would put me back where I started, Mr. Chairman, because I have these people to take home.

DR. DUPRE: Okay.

25 MR. CAUCHI: That's the reason I wanted to go after...you know?

DR. DUPRE: Okay.

30 MR. CAUCHI: If you can't hear me today, well that's fine with me. I could come back tomorrow. I could come back next week. I waited too long, but I tell you, I got to get this off my chest. There is no way you are going to stop me, or anybody, and I know you are not trying to stop me.

DR. DUPRE: No. But okay, your convenience is best

DR. DUPRE: (cont'd.) suited if you come back another day, is that the point?

MR. CAUCHI: Right.

DR. DUPRE: Okay. Well, I can't promise you what the day will be. I can't set a date at the moment, but we certainly will arrange time in our schedule so that you can complete this presentation. Okay?

MR. CAUCHI: Sure.

DR. DUPRE: Okay, fine.

Shall we then rise until approximately two-fifteen?

MR. CAUCHI: Until two-fifteen? Will I still have the time, or somebody else...

MR. JONES: I would be more than willing to let you continue. I think he should. It's awful to break a guy off in the middle.

DR. DUPRE: We are certainly in your hands.

MR. JONES: Well, as far as I am concerned, being a concerned person - that's why I'm here first of all - if the man has a presentation and it has been given a lot of time at the moment, it would be unfair for him to restart all over...

DR. DUPRE: Okay.

MR. JONES: ...and a lot would be possibly lost from what he has given already.

DR. DUPRE: Well, would you be...

MR. JONES: I would be more than willing to wait.

DR. DUPRE: ...I gather we can continue right on.

MR. CAUCHI: Thank you, Mr. Chairman. Thank you.

THE INQUIRY RECESSED

THE INQUIRY RESUMED

5 DR. DUPRE: May we reconvene, please?

I want to thank you, Mr. Jones, for your co-operation.
Mr. Cauchi, would you proceed, please?

10 MR. CAUCHI: Mr. Chairman, I have here the Ontario
Ministry of Labour...it doesn't say which is which - I believe
there was two submissions...and this one here it doesn't say
whether it's A or B or the first one...

DR. DUPRE: What does it say in the upper righthand
corner? Does it have any reference there to Windsor, or is it
the...

15 MR. CAUCHI: Health and Safety Arising from the
Use of Asbestos in Ontario. That's all it says.

DR. DUPRE: All right.

20 MR. CAUCHI: But I take exception to three or
four items in here that were suggested by the ministry people.
On page L fourteen, paragraph thirty-two: Ontario Regulation 1964,
which related to the Act, dealt with these matters in considerable
detail. Section thirty (c) of this Regulation made specific
reference to asbestos as one of the air contaminants which must
be exhausted from the workplace in a manner which would prevent
it from returning.

25 "By this time, asbestos was clearly recognized in
legislation as a health hazard and the detection and monitoring
service were active in controlling exposure to it."

I take exception to this paragraph because such
was not the case at the Johns-Manville plant.

30 I wanted to ask the question last week of one
of the management people in here, but since I was on the maintenance
I was partly responsible to keep the dust system functioning, and
to keep the dust system functioning is like everybody else - everybody

MR. CAUCHI: (cont'd.) needs a rest, but especially in the wintertime.

5 The building was huge and it's hard to heat it. Most of the heaters were out of order or out of commission. To heat the building, they had the louvres turned inside.

By that I mean that the dust control system was shooting the recirculating air inside the building, and I complained about it and we complained about it, we brought the Ministry of Health - they took studies in there and they shut them down for a day or two, but they still put them back on the next winter.

DR. DUPRE: This is 1964, Mr. Cauchi?

15 MR. CAUCHI: Since...no, this is the new dust system I am talking about. Since last year. This has been going on since they put the new negative dust system.

DR. DUPRE: But you are talking about complaining to the Ministry of Labour. I was just wondering what year that was.

MR. CAUCHI: Oh, 1974, 1973, 1972.

20 DR. DUPRE: Okay.

MR. CAUCHI: The number sixty-four, Mr. Chairman, came up because this says Ontario Regulation has been in effect since 1964.

DR. DUPRE: Okay, thanks.

25 MR. CAUCHI: I object to that. If it was in effect since 1964, how come they did nothing about it in 1974?

I go to page fifty-seven on the same thing:

30 "The hygiene controls just consist of requirements which might include no eating, drinking or smoking in the workplace; leaving work clothing at the workplace and having laundry done in facilities provided at the workplace or a facility aware of

MR. CAUCHI: (cont'd.) "the asbestos hazards; and provision of sanitary lunchroom, washing, shower and locker facilities".

This program was never initiated at Johns-Manville in 1977. In 1976, when they built the new washrooms in transite pipe, and double lockers, before if you had double lockers...and I might add, there is two people in the maintenance department that had double lockers, and we were always in trouble...and that was me and the late John Dodds, because we were next to each other, and we were always in trouble because they wanted to take one of them from us because there wasn't enough lockers for everybody.

But I always managed to keep a locker for my dirty clothes and a locker for my clean clothes...so did the late Mr. Dodds.

So this, you know, this is the Ministry of Labour, occupational health and safety division.

There is, on the same page, fifty-seven, the chest disease service, paragraph one thirty-five:

"The occupational health branch has provided a mobile chest x-ray since 1947. Its purpose is early detection of occupational-related diseases, including those caused by asbestos."

You have to remember that what they said in here, 'including those caused by asbestos', they been looked after since 1947.

You turn the page and the same people are telling you that chest x-rays, taken by chest disease section occupational branch, total number of x-rays: "1948 - unavailable; 1950 - unavailable; 1960 - twenty-nine thousand".

None of them mention asbestos, but from 1961 the occupational health branch start checking people for exposure to asbestos.

MR. CAUCHI: (cont'd.) Why wait until 1961?

They never checked anybody for asbestos or silica exposure, altogether...until 1966. Yet paragraph one thirty-five said they been doing it since 1947.

In 1961 and 1962, "the branch has two major studies..." page sixty-one, paragraph one forty-seven..."the branch has two major studies underway of asbestos-exposed workers at the Canadian Johns-Manville Scarborough plant. Both are attempting to explore exposure/response relationship, one by studying the mortality experience and the other the incidence of asbestosis in long-term employees.

The board objective here is to develop an exposure model which may have practical application in understanding the hazards of asbestos and the development of exposure limits."

Now, in the month of May, an ex-fellow worker died with asbestosis. The pathologist...they had everything from the hospital...I questioned the nurse, I said, you know... the nurse at the Johns-Manville plant...did you know that a gentleman died? She says, yeah, he took a heart attack.

Now, that heart attack is going to be on his report that goes to the survey, and as far as the survey is concerned and the Ministry of Labour, there is another man that died from a heart attack.

His wife don't want nothing to do with anybody, because she is sick and tired of seeing everybody else fighting and prolonging this.

On page sixty-two, paragraph one forty (a) (2): Use of the threshold limit values to assess worker exposures since 1947.

We were never given results until, like I said, 1974.

5 MR. CAUCHI: (cont'd.) And that's because the government made them give us the results. Other than that, the government used to come in once a year, and the company came in twice a year. The company came in twice a year - more than the government, but the union and the employees were never advised of the level of exposure of the plant - what the TLV was.

10 I must say that I read this report by Mr. Peter Barth, and as far as I am concerned, speaking for most of these people, I think that it's pretty well what I was thinking of before I read the report, and I must say that he pretty well summed up my feelings in most of his reports in here.

15 There is a great length of markings in here that I would like to comment on, but some of them have been mentioned to you, like you hear two of them this morning.

When he says on page two point seven:

20 "I found virtually no reversals by the review branch, of the decisions made by either the claims adjudicator or by the medical service division, amongst the hundred and fifty-six files I read."

And that's the frustration when we have to go for an appeal hearing.

25 One particular guy went for a hearing six times. Six times the doctor says that your total disability assessment, it couldn't be more than ten percent.

30 The sixth time, the specialist...I like to stress this...the specialist that examined him in the hospital, the specialist that was looking after him for the last two years, the specialist that took care of ten asbestos workers, eight of them died, and knows inside out of an asbestos worker, he testified at the Compensation Board on this particular man's behalf, and his advice and his testimony was ignored because Dr.

MR. CAUCHI: (cont'd.) Stewart, the chest disease specialist, stated that this man's disability is only ten percent.

Now, you could get the brief of the last report of the appeal hearing. The doctor, the specialist that was testifying on his behalf was Dr. D. Smith, an internal specialist from Oshawa for the last fifty years.

If you hear that workers are hard to find a doctor to go on their side or take appeal cases or Workmen's Compensation cases, there is a man that will. There is a man that with one leg and one eye, was not afraid to drive all the way to the Compensation Board on a rainy morning.

So what Mr. Barth says about the bureaucracy of the Compensation Board with regard to the asbestos workers, I'll agree with. And what he said in there, it deserves attention and should be corrected before most of these people that there have been appeals to come through yet.

It's a never-ending procedure. It seems that between the rehabilitation branch, the actual WCB adjudicators and the chest disease specialists, the occupational health branch, you get four bureaucracies to fight, and for a widow that doesn't have enough money to drive to Toronto or pay for a bus to come to Toronto, it's hard.

For a man that's getting nothing, or ten percent compensation, such as the case of John Tops - ten percent compensation - he has been disabled, he gets the Canada Pension Plan because he was totally disabled. His doctor says he is totally disabled. The specialist says he is totally disabled. Yet this man, he lost his case five times because some guy that never knew what asbestos is...and I would like to stress this to you...the man that is in charge today, the man that is in charge today, of the occupational health branch, Dr. Roose, examined me in 1974. He says, what's the matter with you...at Sunnybrook

MR. CAUCHI: (cont'd.) Hospital...he was, what you call it, like articling...he was intern. He says, what is asbestos?

I had to get him the books to study about asbestos. Today he took over from Dr. Vingilis, in charge of the asbestos workers. Yet in 1974, he never heard of the word asbestos or asbestosis.

This is the kind of literature we get from these people. These are close...1976, my specialist, final diagnosis:

"Pulmonary asbestosis."

1977, about six months later, I go back to Grosvenor: "signs of asbestos dust inhalation, examine within two years. We recommend that the claim not be allowed."

This is when I had my appeal. Signed by Dr. Budlofski (phonetic).

The same doctor, when I phoned...Dr. Budlofski has been there for years, at the occupational health branch...Dr. Budlofski, when I was health and safety chairman at the plant, I phoned him and I says, Doc, I want you to pick up the films of Ed Cauchi and Mr. Dodds, because we feel there is something wrong.

He said to me, "Mr. Cauchi, you could come down and check your x-rays, because there is some markings. But as for Mr. Dodds, nothing to worry about."

This is the same Dr. Budlofski that says, "We recommend that the claim not be allowed". Six months before that, my specialist says pulmonary asbestosis. I got that in here letter after letter, but the Compensation Board keeps saying 'asbestos dust inhalation effects', and every other specialist that I go to, including the people in New York and Dr. Nicholson, Dr. Anderson in New York, they say that this

MR. CAUCHI: (cont'd.) is pulmonary asbestosis caused by fibrosis.

5 Year after year after we have been checked at the occupational health branch...1982, 1981, 1977, 1980, they go one after the other...your recent examination...same as Mr. Barth say...'your recent examination indicates that there is no evidence of an industrial chest condition. Your case will be followed closely and you will be advised. If you have any
10 reason for objecting, don't hesitate, please let us know as soon as possible'.

This is year after year. Then one day, send a report to my doctor. They said, well, this guy have no disease. My doctor tell me...I'm not a doctor, I don't know anything
15 about medicine, except take the odd aspirin when I get a headache... my doctor tell me, if you have the disease you are not here, because once you get the disease you are going to pack it in in a few weeks - that type of disease. There is nothing you can do about it.

But these are the problems we face. When I
20 went on rehabilitation I had to sign a form...today they don't have to sign a form...to go to Durham College of Applied Arts. Only two out of eighteen had to sign this, the rest didn't have to sign. I'm still sitting at home doing nothing today, driving them crazy.

The program was based on one page of agreement.
25 Within two years, they changed it to four pages...assistance program for asbestos workers.

DR. UFFEN: Mr. Cauchi, would that be the thing that you had been asking them to give you in writing?

MR. CAUCHI: I never asked them to give me
30 nothing in writing.

DR. UFFEN: Pardon me, your associate.

MR. CAUCHI: Oh, yes. That's right. Mr. Pagnello,

MR. CAUCHI: (cont'd.) yes. That's right. He wanted one of these, yes.

5 DR. UFFEN: That's the thing that they wouldn't send him?

MR. CAUCHI: Yes.

10 You see, me being one of the co-founders of the rehabilitation program, I had copies of it. But I doubt that every one of them that was called in to go on the program was given one of these notices. But if you go on the program, you will sign one of these forms that you go on rehabilitation and there is so much money you are making. Like, my wages that I was making in September, 1976, based on seventy-five percent of them wages. That's what I'm getting seven years later, see? I think according to Weiler, these are going to be reviewed. But they don't expect a family to survive, or a widow to survive, on the wages that they made ten or twenty years ago. These have to be upgraded every once in a while. Everybody else gets a raise, why not the workers? Why not the widows?

15 I tell you, I could go on and on, from Dr. Vingilis in here, consultations reports, just 'x-ray film and were sent to Dr. Smith because you requested them. That's all he ever tell you. They don't tell you about your condition. They don't say, listen, fellow, your condition is getting worse, because the minute your condition is getting worse, you are going to get some compensation.

20 But if they keep telling you that you are only ten percent, or fifteen or twenty percent, during your two years of hearings I don't think anybody could come up to you and say that anybody is ten or twenty percent. I don't think there is a man in the world that will say to a woman that you are half pregnant, that's for sure. And it's the same thing with asbestos workers.

25 30 DR. UFFEN: You mentioned Dr. Smith?

MR. CAUCHI: Yes.

DR. UFFEN: Is he your family physician?

MR. CAUCHI: My family physician, yes.

DR. UFFEN: Dr. Vingilis was sending the medical report to...

MR. CAUCHI: I made him so. I requested. I requested Vingilis to send the reports to Dr. Smith, and when he don't send them to my physician, I'll make sure that he send them because I'll send him another notice.

DR. UFFEN: Did your physician then discuss the notes with you?

MR. CAUCHI: With me, yes. Yes, with me.

In fact, every time I have an x-ray and he'll see the report, he put me for a week or two in the hospital to make sure that his diagnosis is right.

When he don't agree with this report that he hear... not only about me, like I said, this guy looked after ten of us people. Eight of them, unfortunately, died. One of them, two weeks ago Saturday. This guy knows his business. He has spoken personally with one of the advisors, Dr. Cam Gray, on the phone and he says, I'm disgusted with what I hear about these people.

DR. DUPRE: Can I just ask you this. Given that your physician, Dr. Smith, was receiving the Grosvenor Street report, given that Dr. Smith was, as I gather, always reconfirming his diagnosis, correct?

MR. CAUCHI: Yes.

DR. DUPRE: What kind of avenue was open to you to appeal what Grosvenor Street kept telling you about yourself? Was there any way that you could appeal that at the WCB?

MR. CAUCHI: No. I'll read you a letter from Dr. Stewart, the chest disease consultant, 1977, after I sent

5 MR. CAUCHI: (cont'd.) him Dr. Smith's report:
"I'm sorry to have been so long in answering
your letter to me in February, but I wished to
get hold of the results of your investigation
in the hospital.

10 I think that you probably know that while you are
in our special program, you were informed that
you do not have asbestosis, but you do have signs
of asbestos inhalation.

As far as I can see, the investigation in the
hospital by your physician did not reveal anything
new or anything different compared to last year's
test.

15 We therefore cannot consider this to be a
compensable layoff.

We wish to have you re-examined at Grosvenor
some time in May, which is the usual one year
interval for me."

20 So when Dr. Smith sent them the report, and I have
a copy of the scan, the lung scan by two physicians, two
specialist...lung scan is the same thing, the report is the same
thing from the lung scan: "increased density region, asbestos...
pulmonary asbestosis", and all that.

25 You got the same letter in here from Dr. Vingilis,
that as far as they are concerned you are not compensable.

30 So what are you...I have three specialists there
confirming I have no disease. Because I tell you the truth, you
know, I could sit down here and argue all day and read papers
all day, but don't give me any work because I can't do it.

Where I live, if the elevator don't work, I won't
get up. I wait until the elevator is fixed, even if it takes ten
years.

MR. CAUCHI: (cont'd.) But these are the types of bureaucracies that I have to go through.

5 DR. DUPRE: Can I just ask you this? At any time did the WCB, in its correspondence with you, tell you whether or not your record has been referred to the advisory committee on occupational chest diseases?

10 MR. CAUCHI: Well, in one of the letters of Dr. McGregor, I think I got two...Dr. McGregor, 1980, status of my medical condition, claim so-and-so, "a report will be your

last letter. As promised, this matter has been investigated and indeed I was quite correct in my initial correspondence to you that the chest advisory committee concluded that you are not suffering from asbestosis, but rather have some ill-defined changes in your x-ray which may or may not indicate"...what are we talking about?

15 This is the advisory committee, yet they are not sure whether it may or may not indicate. So because they are in a grey area, whether I am or not, I won't get any money. So the benefit of the doubt is for the WCB, for the Johns-Manville Company, and to heck with the worker.

20 The final diagnosis in my case was, "Therefore a slight asbestos fiber dust effect with no present disease." They keep saying 'the disease'.

25 I don't want no disease. If I have to get money...if I have to have disease to get any money, I hope I never get any money.

30 In my years with the corporation, from day one, 1953, the only time that anybody come to that plant for employment, and I sit with a few of these people at a time when I was secretary...I held that position, even president for about three months...these workers coming into the plant were never, ever told the dangers of working with asbestos, until 1974/75.

5 MR. CAUCHI: (cont'd.) Until that time, the only thing discussed about safety, with the worker, was make sure this is the Johns-Manville Safe Work Manual. The only one.

Unfortunately, one of the people last week couldn't identify this book. Yet I got that from his office.

10 They talk about safety shoes, gloves, safety glasses, but don't talk about respirators whatsoever in this book, and this is Johns-Manville's Safe Work Manual right there.

15 Mr. Chairman, I think I took enough time. I was waiting for today. I know that you are not going to demand the government to do anything, you are going to recommend, but I hope in what you recommend it won't be a fruitless two years, and these widows hope will go all in the air. I know that most Commissions is not worth the paper it's written on, but the government gather a lot of dust in there. I seen a lot of them in my time.

20 But as far as this Commission is concerned, I was always optimistic because even if it's going to sit in there I can go back to the Legislature and hammer them on it.

I thank you very much for your time, sir.

25 DR. DUPRE: Well, thank you, Mr. Cauchi, and we have in part accounted for the amount of time that you have taken, because we have been interrupting you with questions.

MR. CAUCHI: That's all right.

30 DR. DUPRE: Let me ask my colleagues if they have any further questions at this time.

I have no further questions either, Mr. Cauchi, but thank you very much indeed.

---Mr. Cauchi retires

35 DR. DUPRE: Well, Mr. Jones, thank you for your patience.

MR. JONES: Good afternoon. First of all, my

MR. JONES: (cont'd.) name is Michael Alfred Jones.

My qualifications for being present here this afternoon is, number one, I am an active thermal insulator mechanic belonging to the International Association of Heat and Frost and Asbestos Workers Union, Local 95, since 1971.

This enables me to have firsthand knowledge of the asbestos matters on which the unsafe practice of application, removal encapsulation and emolition is being done.

Number two: I have been on the executive board of our local, which includes the province of Ontario, and I also presently am the area steward for the Hamilton/Niagara region.

Through these positions I have an opportunity of exposure to most members and their opinions and concerns and experience about asbestos.

I am the chairperson of the occupational health and safety committee of the asbestos workers.

This has given me direct knowledge of the unjust procedures of Compensation, the unjust treatment of the asbestos victims by the employers and by the government, and has also given me the knowledge of the inadequate records kept on asbestos workers by anyone.

Number four: I am a concerned human who sees and feels the crimes against society as a whole, as well as against the asbestos workers in Ontario.

Okay, first of all: What I am and who we are.

We are the workers who have covered your pipes, your tanks, your boilers, your ductwork, with asbestos and asbestos-cement.

My fellow brothers are actually dying, leaving families behind to fend for themselves, only after some twenty and some thirty years of being in the trade, which leaves many to still have young children at home.

5 MR. JONES: (cont'd.) We are still the same Canadians that have built this country. We have built refineries, we have built the generating stations, we have built the hospitals, we have built the churches, we have built the...as a matter of fact, we probably worked on this building here that we are standing in today, and have brought asbestos to you as well as ourselves.

10 As I have stated in my previous written report, all of us have been subject to lethal doses of asbestos dust, without any health warnings, without any knowledge of actual health hazards, without any personal protection, or the knowledge of how to use the personal protection.

15 If we are to provide a more safe working environment for any future asbestos workers, law must be made quickly to provide the workers with the knowledge of health hazards derived from asbestos. Law must be made to provide asbestos workers with proper protective equipment, as well as the knowledge and the training in the use of this equipment.

20 Law must also be made for the protection of individuals indirectly associated with asbestos substance.

25 To assist these laws in minimizing occupational health hazards, inspectors must be specialized in the field of asbestos. The numbers of inspectors must be increased, inspectors must have the working knowledge and the ability to enforce the guidelines of asbestos encapsulation, removal and demolition effectively.

30 Because the dangers of asbestos is now being accepted, this has actually created a large number of removal, encapsulation and demolition sites of asbestos. Asbestos is such a health hazard that on any jobs site where is being handled, a government inspector must be present regardless of the size of the job.

With only ninety health and safety inspectors in

MR. JONES: (cont'd.) the province of Ontario, none of which have specialized in the field of asbestos, this makes it impossible.

For many, the realization and the acceptance of asbestos health hazards has come too late. Today, when an asbestos worker realizes he has a health problem caused through the exposure of asbestos, he must first go to his family doctor and then ask his physician to refer him to a specialist in the chest and lung field.

Unfortunately, there are not enough specialists in the field of occupational medicine, or especially specialists in the field of asbestos health hazards.

Doctors who specialize in the fields of asbestos are located only in a few major centers in Ontario, such as Hamilton, St. Catharines and Toronto. Therefore, it leaves many asbestos victims without readily accessible medical attention.

This tragic reality is that most asbestos victims are at the advanced stages of their disease and disorders when they are aware of their problem.

There is reason for the late awareness of the problem. The occupational chest disease board has actually withheld the vital information about changes in some x-rays of workers.

In other points where a report has been made, doctors have told the victims that there is nothing to worry about.

To prevent this, an early cancer-detecting screening center must be set up for all asbestos workers and their families. This would involve a full physical examination by a physician, which also includes chest x-rays, pulmonary function tests, urine tests, blood counts, a wide battery of chemical blood tests, special blood and skin tests for immunological status and cancer resistance, and a sputum test, and

MR. JONES: (cont'd.) any other analysis that may help detect cancer.

5 These centers will also be able to detect cancers and disorders in the early stages, and then let the preventive medicine treatment take place.

10 If and when the early cancer-detection centers discovers someone with early symptoms, the victim must be removed immediately from the exposure to asbestos. In doing this, the victim will generally be removed from his occupation.

 As such, to compensate for those who lose their career as asbestos workers, then they must have the choice of retraining for future employment.

15 Some of the new career training programs could teach the asbestos victims how to become asbestos health and safety inspectors, or teachers to help their fellow workers in the field to learn about asbestos hazards, and to help them learn how to learn asbestos protective equipment properly.

20 A solution to retraining would be to train these victims as asbestos health and safety inspectors. This would be a suitable direction to follow because of their knowledge, their experience gained through the past.

25 Another channel may be as teachers of asbestos occupational protective equipment and procedures. During this period of retraining, it is indeed possible to retain a financial compensation. If indeed possible to retrain, a financial compensation must be made.

30 Okay, what I'm saying is, anyone that is capable of being retrained...because not all are capable of being retrained, as you all know...they must have compensation readily available - not, as we have heard today - two years, three years or four years after.

 If training is not possible due to the advancing

5 MR. JONES: (cont'd.) of the disorder or disease, a financial compensation must be equal to the former income and benefits. This must be done because the impairment to these totally innocent victims was caused by gross negligence of the Ontario government and of the asbestos profiteers.

10 Because of the lateness of this Commission, the lateness of the detection and the length of time it takes to file and receive compensation, it has often been too late for some victims...but not late for his dependents.

15 They must receive a pension equal to the victim's former income and benefits. This leads us to the question of who should hold the responsibility of funding such retraining and compensation and pension plans.

20 It would be unfair to expect the taxpayers of Ontario to pay for the negligence of the Ontario government and for the crimes of the asbestos profiteers. Equally, it would be unfair and unjust to expect the asbestos craftsmen, who have been kept ignorant to the lethal effect of asbestos, to fund for their imposed tragedies.

25 The answer to this question of funding responsibility, we believe, lies in the hands of the asbestos profiteers...these being all businesses involved with asbestos, including mining, processing, contracting, storing, applying, removing, or in other ways involved with the substance of asbestos.

30 For many, the realization and acceptance of asbestos occupational health hazards has come too late. For others, there may be hope if, and only if and only when, the laws are made and enforced and there are inspectors who have specialized in the field of asbestos present at all asbestos removal, encapsulation and demolition sites. This will minimize the incidence of asbestos health disease and disorders.

This, coupled with early cancer-detection screening

MR. JONES: (cont'd.) centers, will minimize the incidence of death caused by asbestos.

Also, with an early cancer-detecting screening center, this will enable a detection at an early stage. Persons could be retrained immediately for inspectors and teachers.

By training these victims, it will reduce the cost of compensation, retraining and training of persons inexperienced with the substance of asbestos.

By an early detection center, it will reduce the number of pensions to the dependents, by discovering it early enough that medical treatment may be successful.

By the following suggestions of the occupational health and safety committee of the Association of Heat and Frost and Asbestos Workers, Local 95, it will in turn reduce the cost of funding to the asbestos victims.

Okay, now that's my written/oral presentation. If there's any questions, I'll be more than delighted to answer them.

DR. DUPRE: Please, and don't hesitate to sit down and make yourself comfortable by the way.

MR. JONES: No, I prefer...

DR. DUPRE: Okay. I have a couple of questions if I can lead off with them.

I take your submission about the desirability of an early cancer detection system. Now, do I gather that what the medical surveillance people from the Ministry of Labour are up to in the occupational chest disease division just doesn't fit the bill, from the way you see it? That's not the operation on which to try to build the kind of early cancer-detection system you would like to see?

MR. JONES: Unfortunately, that is not an early detection. Most cases it is withheld. Also, we have found

5 MR. JONES: (cont'd.) with our...we have a survey like this going with our International...and we have found that with this early, preventive screening that we can catch people in the early stages. We also found that not only does this affect the members, the working man working on the job, but we have found that...I'll just read from this report about screening program shows some wives affected by asbestos.

10 "The first results show that wives of asbestos workers in Chicago and Columbus, Ohio, had one in five chances of being affected by asbestos." Those results came from Local 79, wives who were x-rayed in Chicago last November, and from another hundred and forty-one wives who were screened in Columbus the following month.

15 In other words, what we are doing is having this early detection center that would not only help the workers, but the families. I have yet to hear today anyone bringing the point that it's not only us workers, but our family also, who have been shown with asbestos exposures.

20 DR. DUPRE: The other question I had, Mr. Jones, arises from my reading of the written brief that was submitted.

MR. JONES: Yes.

25 DR. DUPRE: This brief documents, especially on pages five, six and seven, some...I will call them deficiencies, but certainly are alleged in terms of some removal processes involving Ontario Hydro.

Can I draw your attention to page seven, in particular?

MR. JONES: Yes.

30 DR. DUPRE: Because on page seven, you point out how asbestos removal operations were carried out before an inspector was called in in January of 1982.

MR. JONES: Yes.

5 DR. DUPRE: Then you point out that the inspector may or may not have done certain things, all that part of it, but in any event what caught my eye was right in the middle of the page, you make the point that two weeks after the inspector was called to the job site, the man who signed the complaint...which was a complaint addressed to the Ministry of Labour...was laid off.

MR. JONES: Correct.

10 DR. DUPRE: I am interested in that, of course, because under the current legislation, as you are well aware, at least they have written into the Act some provisions that are intended, at least, to protect workers from reprisals.

MR. JONES: As you well know, all these...I have with me the guidelines and I have with me...well, the guidelines for removal...and I believe what you are talking about is Bill 70?

15 DR. DUPRE: Yes.

MR. JONES: Now, unfortunately, construction and industry are two different segments, and unfortunately on construction all the rules you can sit here and fancy, make up, do not apply practically on construction. And that is our major problem.

20 As you pointed out, that...now, I will turn around and point out, to show you how it is, how reality is, if you look on page three, you will see an incident that I was involved in on May 10, 1978, where as you all know, washing facilities, if you are to be treated in any humane way, should always be available for anyone working with any dust or with anything, as well as paper, and in 1978, the insulators at Texaco Oil Refinery walked off the job for three days, fighting just to get water.

25 Now, the result of that was when we went to the Ontario Labour, was that with the guidelines and the rules set down, your health and safety standards only force the employers

5 MR. JONES: (cont'd.) to bring a barrel of water, which could be a forty-five gallon drum of water. It doesn't state city water, clean water, whatever.

So what I have here, these examples are not...none of these examples are rare examples. This happens every day.

10 As a matter of fact, I'm on job sites today..not today, because I'm here...but at the present, I am at a shipyard where asbestos is being removed from a government coast guard boat, where there is no guidelines being followed.

15 Guidelines on construction and in shipyards do not exist. They may exist on paper today, but they do not exist... today people are eating asbestos, us insulators have ate...I say ate...asbestos for years, literally eat it. And not only do we eat it, but we take it home for our wives and our families.

The worst crime of it all is, it only takes one exposure and that one exposure was when you first started. We were never warned.

20 DR. UFFEN: Is the shipyard under the department of national defence, or is it a private shipyard?

MR. JONES: It's a private shipyard, all right? But like I say, the problem is we all...when I say we all, I mean my local, us construction workers, the asbestos construction workers not only in the union, but the nonunion...excuse me, Mr. Mustard, may I have your attention?

25 I spent a lot of time coming here and a lot of time working on this. I would appreciate your attention.

30 Anyway, we are subject, and have been subject and will be subject to eat asbestos until the cows come home, unless there is a law being made immediately, because as you know, guidelines are not law and guidelines do not have to be followed. As that case I was stating where the anonymous phone

5 MR. JONES: (cont'd.) caller called in, our inspectors that came to the job site had no knowledge of asbestos, they had no knowledge of the guidelines. I know this firsthand because I phoned to get them there. I asked them on the phone about the guidelines. They said, yes, there's guidelines.

I asked them what the guidelines were. They had no answer of what the guidelines were.

10 DR. DUPRE: These are people from the construction safety branch?

MR. JONES: Yes.

DR. DUPRE: Okay.

15 MR. JONES: And another thing, talking about this, as you are aware, now there are programs to teach people the proper removal and encapsulation of asbestos. As I just told you, from the area I come from there are ships, coast guard ships that asbestos is being removed. And as you know, in the St. Catharines area now there are schools that are being...the asbestos is being removed and encapsulated.

20 Now, in June of this month there was supposed to be an education program in the St. Catharines region to teach the proper procedure. I was supposed to be informed of when it happened. From my understanding now, it has been postponed until September...after which all these job sites will be finished, after which everyone will be exposed to more asbestos.

25 DR. UFFEN: Who was going to hold the school?

MR. JONES: It is part of the educational branch of the occupational health and safety...

DR. DUPRE: Of the Ministry of Labour?

MR. JONES: Yes.

30 DR. UFFEN: It wasn't anything to do with the Ontario Research Foundation?

MR. JONES: No, it wasn't.

5 DR. UFFEN: About your early cancer-detecting screening project, would you visualize this to be a government agency, or would you visualize it to be an independent one, say like similar to the Canadian Cancer Foundation?

MR. JONES: First of all, it would have to be funded and should be funded by, as I call, profiteers of asbestos.

10 Secondly, the only people we feel that would do it properly is state agencies, which is government.

Okay, the purpose of that is, hopefully, government would be unbiased and do the job properly, as we pay them to do.

15 By having the screening center, it does save many lives now, and if it saves lives, it saves costs on compensation in the future where people are detected later on in life and they have had a problem that's been going on for years. It would stop this and help these people get retrained earlier in the state of life where they could get another job.

20 DR. UFFEN: But the main point, criticism you have of the existing Ontario government agencies is that it is not an early warning system?

MR. JONES: That's one of my major problems.

DR. UFFEN: One of the major ones.

25 DR. DUPRE: Let me ask you another thing, though, because you are making me...and I'm grateful to you for this... you are making me very conscious of the extent to which nonfixed place or construction is different from other industries.

Is another problem with the current medical surveillance program of the Ministry of Labour that it doesn't mesh in with construction as well as it might?

30 MR. JONES: My opinion is that at the moment we have chest and pulmonary function tests once a year at different areas where we have different area stewards and we have different cities located for the jurisdiction. Okay, so that is

5 MR. JONES: (cont'd.) one problem when a man is working out of town and cannot get home - if he is working out in Alberta or he is working in another province and he cannot get home for it - but that's not a major problem.

The major problem is that even these x-rays and tests are always inefficient, and they always catch it too late... if they do tell you about your problem.

10 DR. UFFEN: Would these ships be relatively young, or are they old ships? Are they twenty-five years old...?

MR. JONES: As far as asbestos has been used on construction, this can only come from my personal experience being since 1971, that asbestos has been used on boats up to at least 1974, as well as all construction sites.

15 DR. UFFEN: I haven't any idea, but how long does it take to refit this ship? Is this a six-month job, or a six-week job, or...?

MR. JONES: Actually, the time it takes is not important. The importance is the exposure to asbestos, whether it be six months....depending.

20 What I'm saying is, sometimes they are six months, depending on the size of the job. Sometimes the exposure to asbestos by removal or encapsulation may be a one-day or a one-hour job.

25 DR. UFFEN: But what I had in mind is, a man might get exposed for a couple of days, and six weeks later he is off on another job. That's what I was thinking about, is the mobility of the type of work.

I haven't any idea how long it might be on any one ship.

30 MR. JONES: Well, the mobility of any job in particular is unquestionably indecisive, because you do not know

5 MR. JONES: (cont'd.) how long, whenever you take a job, how long the job will be. Whether...see, we have a hiring hall system, which we are hired from our local to go to different companies, and you do not actually know how long the job will be or how long you will be on the job.

You see, there's two different things. The job may be for six months, but you may not be on the job for the full six months.

10 DR. DUPRE: One other question, if I might.

You were saying that...you are using the term 'we' when you are saying that 'we' do get the opportunity for surveillance about once a year.

15 Now, by 'we', you meant members of the International Association of Heat and Frost Insulators and Asbestos Workers Union?

MR. JONES: Yes. Local 95.

DR. DUPRE: Right.

20 Now, can you speculate to help me on what is likely to happen to construction workers who are involved with asbestos, who don't belong to your union or your local?

MR. JONES: Well, in my written copy, what I did is I gave you information and different examples of different job sites, which are union, and I ended it with an example from a worker that belonged to a nonunion outfit, which states...I can't...

25 DR. DUPRE: Yes, this is on page eight.

MR. JONES: It actually states:

"Unfortunately, when a person has no union to stand behind him, and he is an individual, he is more persecuted than the people with a union."

30 As a matter of fact, those people, unfortunately, do not even realize the dangers unless it is too late.

As I said there, a lot of them says, 'we don't

MR. JONES: (cont'd.) 'have to worry, we hold our breath'.

5 It's a joke, but it's reality. That's the harshest thing about this all - people are dying constantly each day.

DR. DUPRE: And to the best of your knowledge or information, or just general feel for the situation, government inspection is not, to any degree, taking up some of the slack in these situations where you do have nonunionized people?

10 MR. JONES: Well, if you take my example I have given, on page seven, you will find what is being carried on when we call an inspector in.

15 What happens when we call an inspector in, you get an inspector there who knows nothing about asbestos, he does not know the guidelines. On job sites, for a person to expect a different eating area, for a person to expect change rooms or lockers or vacuum systems, or even to have actual wetting agents remove the asbestos, or asbestos bins to put the asbestos in - closed bins...now, they have bins on some sites, but not closed, so the asbestos is still blowing from the bins and putting other people to the exposure of the asbestos...with all this happening, 20 even with the inspectors on the job, it is not expected that anything will happen where there is no inspectors or there is no union.

25 As a matter of fact, one of my information that was given to me by one of the inspectors was, one of their major problems is they do not know where the asbestos removal sites are going on or are taking place. They have no idea, they have no knowledge, no knowledge from the contractors doing it or government agencies, at all.

30 As a matter of fact, I don't see any inspectors here to learn about asbestos on this Commission.

DR. DUPRE: Well, we have had some people other

DR. DUPRE: (cont'd.) days, I can tell you, but not at the moment.

5 MR. JONES: And for a person to be an inspector, to come to job sites, and to feel the fear of the people going to work each day knowing that one day they may find out that their lives are over, or their occupation has been finished, but short - they have no feeling for it. They cannot...if a person has no feeling or practical knowledge, how can they come in and enforce guidelines?

10 There is no way. And for inspectors not to be here present, it's a crime in itself.

15 If I was to call up an inspector to be on my job site tomorrow, I may have one there if I'm lucky. And if I have one there, I will know...my knowledge right here is vastly greater than his. He doesn't even know or feel...and that's the problem, when you do not have the feeling for the dangers.

20 You can easily sit back and say, oh, well, there is danger, but to feel the dangers and feel the dangers and the concern of the people actually working in the trade, is something else because each day his man puts his coveralls to go to work to kill himself.

25 Unfortunately, he cannot give up his trade because it has already been exposed - one exposure does it to you - your chances are there, it has already been damaged. He has to go to work, he has to provide a living for his family.

30 DR. DUPRE: Let me just ask you this: When all is said and done, would it be a fair characterization of the construction sector that they have some consciousness about accident prevention, but do not have an inclination or a concern for disease prevention?

MR. JONES: That is one problem, plus, did you not know how to enforce the guidelines or make the guidelines practical

MR. JONES: (cont'd.) on construction sites, which is just as major a problem.

Even if inspectors do know the dangers and do know the guidelines, put this into practical use on different construction sites - it is impossible if a man has never worked on pipe racks, if a man has never worked in different situations.

I mean you can have guidelines telling you how to put barriers up, but unless you know how to work on the project with the barriers, it's no good.

DR. DUPRE: How are they on at least accident prevention guidelines, applying those?

MR. JONES: They probably apply those as well as they apply the asbestos guidelines.

DR. DUPRE: Oh, I see. You are not saying they are any better on the accident prevention side there, than on the disease prevention side?

MR. JONES: What I'm saying is, from my knowledge, from them coming on job sites, it is equal.

DR. UFFEN: We have had representations made to us by Ontario Hydro about their policy, and you give a case history here about the chap working at an Ontario Hydro generating station.

Is he working for Ontario Hydro, or is he working for a contractor on...?

MR. JONES: Okay. Now, on Ontario Hydro...I don't know if you are aware, but there are different agreements that we as construction workers work under. Under the Ontario Hydro projects we work under the UPSCA agreement, which means that we are working for contractors, outside contractors, but on a contract that is return related with Ontario Hydro.

So you are working for both.

DR. UFFEN: This fellow's boss is who should be

5 DR. UFFEN: (cont'd.) looking after the work site. It wouldn't be Ontario Hydro, then, it would be a contractor?

MR. JONES: They would be outside contractors with Ontario Hydro safety regulations involved.

DR. UFFEN: With Ontario Hydro safety regulations in force?

10 MR. JONES: Right.

To my knowledge, on this job site today, there has been one change. It has been a major change, and unfortunately it is not happening all over, but they are actually given a suit with their own air supply to it.

15 Unfortunately, I do not think they are given changerooms or washrooms or showers, but it is one step.

DR. UFFEN: At a generating station...do you know which one this is? It would be fairly big, I guess.

MR. JONES: Yes, I know the generating station that this is at.

20 DR. UFFEN: Would it be the Heath Generating Station?

MR. JONES: Excuse me. Where is the Heath Generating Station?

DR. UFFEN: Isn't it the one on the outskirts of Toronto, here?

25 MR. JONES: I believe that is the case I was referred to...or Hearst, I believe it's called.

MR. LEDERER: Are you referring to the Hearne Station?

DR. UFFEN: The Hearne Station.

30 Well, at a place like that, it's a nonfixed site for the construction worker who comes in, but it's a fixed site for other people working there, and there is still no changeroom

DR. UFFEN: (cont'd.) or laundry facilities, or washrooms?

MR. JONES: There's no changerooms on any job sites in Ontario, that I know, at the present, for construction workers in the asbestos field.

DR. UFFEN: Even when the site...

MR. JONES: Even when the site has their own, because they do not want you to expose their workers with your hazard.

DR. UFFEN: With your clothes and that?

MR. JONES: Yes.

DR. UFFEN: Does this apply in the schools?

MR. JONES: Well, as you know, most schools have gyms and they have showers. Now, whether you are allowed to use them may be a different story.

They may have them there, but it doesn't mean they are available to you as a worker.

DR. MUSTARD: Do you know anything about the Toronto Airport, Terminal One? Do they have changerooms there?

MR. JONES: Pardon?

DR. MUSTARD: Terminal One out at Toronto Airport where they are removing the asbestos, do they having changing rooms there?

MR. JONES: I have no answer for that. I do not know. I know there was quite a commotion on it down there, and a few people are trying to get changes and there may have been, but to my knowledge I do not know.

DR. DUPRE: Your union is involved in the Toronto Airport job, is it?

MR. JONES: Yes, they are.

DR. DUPRE: Any further questions?

Thank you indeed, Mr. Jones, first of all for your

DR. DUPRE: (cont'd.) presentation, but also for your patience in coming forward at this time. Thank you.

MR. JONES: Fine. Thank you for giving me the time to speak.

DR. DUPRE: Mr. Ublanski is next.

Could you indulge us in a ten minute station break, Mr. Ublanski?

MR. UBLANSKI: Yes.

THE INQUIRY RECESSED

THE INQUIRY RESUMED

DR. DUPRE: Mr. Ublanski, thank you for your patience. Welcome back.

Proceed, please.

MR. UBLANSKI: I suppose I might just start by just saying that I wasn't planning on referring particularly to my brief, so if there were any questions arising out of the brief, we could start off with those and then get into my comments after.

DR. DUPRE: I have a few questions, but maybe it would be easier if I could preface them with the following: Since you are counsel for a party with standing, you have received a copy of the Barth Study, have you?

MR. UBLANSKI: Mmm-hmm.

DR. DUPRE: Have you also received copies of the two reviews that have so far been done of the Barth Study?

MR. UBLANSKI: Mmm-hmm.

DR. DUPRE: In that connection, Mr. Ublanski, in your brief I was, of course, quite interested in a number of the statements that are made in the vicinity of pages three to six, and of course I duly note that this brief was written back last October.

5 DR. DUPRE: (cont'd.) When I reread your brief prior to today, I immediately thought of Professor Eissen's review of the Barth Study, and in particular my mind took me to what I found to be - subject to such corrections as you may want to make - but what I found to be the altogether enlightening series of charts that appear on pages ten to twelve of Professor Eissen's review, most particularly about, of course, the extent to which, as he tells it, there does seem at the moment to be an entanglement as among medical questions on the one hand, and on the other questions of law and/or nonmedical facts.

10 I guess my opening comment was, having written what you wrote last October, and now having what Professor Eissen quite independently reflected upon after reading the Barth Study, how does Professor Eissen's approach sit with you?

15 MR. UBLANSKI: Well, I suppose I should start...I was going to say it anyhow, and I'll say it now since you brought it up...I think that, as you recall at the time, there was some bit of conflagration about who would get access to what prior to writing the brief, and of course it had been my original hope that rather than shoot from the hip and just relate what I thought, what I felt to be the experience I had with this relatively-small number of files that I was familiar with...rather than shoot from the hip, that I would have an opportunity to get as much background information as possible before I made some of the statements that I made in the brief.

25 Now, that didn't work out, but I must say that certainly that didn't deter me and I decided that I would go ahead and do it anyhow, and perhaps I said things in the brief a little more sweepingly than I...even at that time than I really probably could perhaps justify..certainly as being a general observation. I may have seen something on one file, but I didn't know whether the same thing had happened in other files as well, so it was a question of whether you were going to generalize from one.

5 MR. UBLANSKI: (cont'd.) Certainly when I read Barth's...I think probably description of the status quo would be the fairest word to use...certainly I don't...I did the same thing as you, I went and reread my brief just to see how it stood up, and certainly I don't apologize now for any of the generalizations that I made based on maybe one or two files. I think that...I could be corrected, but I think virtually every allegation, quote or whatever, observation, that I made, I think was confirmed 10 more or less by Barth in his description, having seen more files than I saw.

15 I think just...I say that more in sorrow than in anger, really. My experience has not been quite as personal as some of the other people who have spoken to you today, but it's, I suppose, on a scale, a little more personal than certainly the outside observer.

20 But having started it without any particular ax to grind, or without any real...no great knowledge of the personalities involved, or the issues, I suppose I always held out the hope that maybe I had just seen one or two bad files and that that didn't represent any kind of a pattern.

Unfortunately...as I say, I say that more in sadness than anything else...that doesn't appear to be the case.

25 I think that the frustrating thing that I found in Barth and to some extent in Weiler before, and maybe they have their reasons for that, maybe there are other reasons for it, but they seem to be unable to take that extra step.

30 It's one thing to describe problems, or why didn't you do that or why wasn't that done, or isn't that a peculiar practice, but I just..I guess while everybody else is getting things off their chest today, I have to get that off my chest as well, and that's primarily why I am taking this opportunity.

I can't let it go at that. I just can't. Just

MR. UBLANSKI: (cont'd.) because of the experiences that I've had.

5 I think you can't acknowledge the validity of the litany of all these complaints and still come to the conclusion that, well, the Board isn't really taking an adversay stance toward workers. I just can't accept that.

10 Certainly Barth has his...can have his own opinions. Perhaps the difference between him and I is that I do talk to claimants, I have had experience with the people. It's not just a file to me. These files have faces, and now they have faces for you as well, some of them.

15 It seems to me that hearing directly from one source and not directly from the other side of the coin maybe affects your perspective, and with all due respect to Barth, and to some extent Weiler as well, I think that I just can't accept their conclusion on that particular point, and I'll have more to say about that later.

20 But I think that was a serious weakness in the Barth Study - not perhaps deliberate, but I think serious.

25 DR. DUPRE: You refer to that extra step which, as you put it, was not taken by Barth and was not taken by Weiler...

MR. UBLANSKI: It was not taken by Weiler either.

30 DR. DUPRE: Is Professor Eissen, in your view, putting it in the direction of the extra step that you have been looking for?

MR. UBLANSKI: Professor Eissen, in a much more scholarly way than I could ever hope to, I suppose has a better way of articulating these things so that it comes out sounding academic. I think...I suppose he is putting some sort of a veil of respectability, if you like, on the kind of gut issues that are ripping inside of me. Perhaps I can't articulate it as

MR. UBLANSKI: (cont'd.) well and analyze it as well and come up with a chart, but I know that those are the things that bother me when I'm handling the cases.

So, yes, sure. I would say that...and I think probably again, although we all seem to arrive at these things independently, but certainly that, I think, is at the heart of the problems that we are having.

DR. DUPRE: That's exactly the kind of opinion we are looking for.

MR. UBLANSKI: I'm not...I would be fair-minded enough to say that I'm not...I haven't had enough bad experience with the accident side of things to generalize that maybe it isn't necessarily something that applies to the rest of it. I'm agnostic on that at this point.

I will say I haven't had the same bad taste in my mouth from any of those cases that I get from disease cases. And it seems to me that perhaps Eissen is heading in the direction as to why I get the bad taste in my mouth when I'm finished, because of these overlapping or the lack of any real firm guidelines, principles, benchmarks - call them what you want.

To me, it's just a jungle. Whenever I get into these kinds of cases, and I really don't...it's hard to know what to do and how to do it, and what's right and what's wrong and how far do you go, is it worth doing anything at all.

It's very difficult. It's a really difficult world the way it is today for, I think, the reasons that that chart suggests, because you really don't know where you are and where you are going and where everybody else is. You don't have a score card. The rules are just too flexible.

Now, maybe since you are going in that direction...I was going in that direction anyhow...I try to think to myself what could I do that might be useful, and I don't know whether

MR. UBLANSKI: (cont'd.) Mrs. Dodds has supplied you with much of the material on her case or not, but I thought that...

DR. DUPRE: We do in fact have...she has been marvellous that way...we have tremendous documentation on it, including the Board history of her husband and so on.

MR. UBLANSKI: Well, I've been waiting for a long time to get that one off my chest, and I thought I would like to discuss that with you in the time that we have, highlighting certain things that I think are very telling about the system, and I think probably put some meat on the submissions of Professor Eissen, and probably illustrate the kinds of problems that he is raising.

DR. DUPRE: Maybe it will just be helpful to you, counsel, if I say this, that when I read all of that material that Mrs. Dodds submitted, once again Professor Eissen's work came very prominently into my mind, so we are operating on very much the same track. I'm all ears.

MR. UBLANSKI: Well, I think there's no question it was a difficult case, for a lot of reasons. But it just seems to me that there's just so many things that went on throughout the course of that history that practically everything, every complaint that was ever noted in Barth's study took place at one time or another during the course of that file.

Now, at the beginning the claim was initiated by a report out of the Ministry of Health. An x-ray was taken, and it showed...or the analysis or the interpretation of the technician was that there were early signs of asbestosis. He forwarded his report on to the various channels.

That started it off in November of 1974. Now, and Mrs. Dodds isn't here, she can't fill in some of the details I may not have, but I know he stopped working, also, in November

MR. UBLANSKI: (cont'd.) of 1974.

5 The claim was made in November of 1974. At that point Mr. Dodds had twenty-one years, ten months and twenty-eight days of service.

DR. DUPRE: Not to interrupt you, counsel...

MR. UBLANSKI: Sure.

10 DR. DUPRE: ...but I just thought for the moment that it might be helpful if I just showed you what we had so that... this is not to preclude some other information as well, but this is the guts of the factual background that we have.

MR. UBLANSKI: That's what I'm working on.

DR. DUPRE: Okay. Good. Thank you.

MR. UBLANSKI: I may fill it in in a few places.

15 DR. DUPRE: Good.

MR. UBLANSKI: Highlight a few different areas.

20 But basically, that's what I worked with on the case. I might say that probably one of the reasons why I am able to talk about this case...and I don't know whether anybody has pointed this out to you...the Board announced with a great deal of fanfare their new policy on disclosure. Now everybody can get into the files.

25 This predated this particular case, but because of Mrs. Dodds, as you know, she had so much documentation it wasn't a great problem getting the copies of things - she had everything. So that it didn't concern me too much what the Board might or might not have had. I pretty well had everything itself.

30 But when you do get into the files you have to sign this little form. I don't know whether you have seen it. Why, I'm not sure, but part of the blood oath here is that you can't discuss the information contained for any purpose other than the appeal.

Why that would be necessary, I don't know.

5 DR. DUPRE: Of course, counsel, one thing I might remind you of is that you and I have both been growing old together in this inquiry, but at the time that we started to work on the WCB thing, as you may recall, the new Board policy was, of course, not in place, and when I arranged for you and for Mr. Starkman, I remember, was that for the purpose of filing briefs to this Commission you could have access to this..

10 MR. UBLANSKI: Oh, I appreciate that.

DR. DUPRE: ...but it was made clear at the time that you would, of course, have to observe the same conditions as you would in an appeal, so I'm not entirely unfamiliar with...

MR. UBLANSKI: Well, exactly. This is the general form for everything. It had nothing to do with the brief.

15 DR. DUPRE: Right.

MR. UBLANSKI: That predated the change in policy.

I'm saying now, just as a general observation, that I suppose as far as some of the other files that I have been into, if I were to divulge some of the information in there I suppose I would be technically in violation...I hope there's no spies around watching me..but technically, that's in there and I don't understand that...unless you've got something to hide.

20 So I don't know why they put that in, but leaving that aside...all right.

The first problem, I guess, that arose in the file, as you see in the summary, was the specialist that Mr. Dodds went to see initially did not confirm the diagnosis of the x-ray technician. In fact he filed a report that indicated that there wasn't any evidence of asbestosis.

25 That was, as I gather, that was a person he went to see on his own. It wasn't a Board consultant.

30 In spite of that...or perhaps that had something to do with why it took so long to eventually resolve...but it

MR. UBLANSKI: (cont'd.) appears as though that particular report died a quiet death.

5 There was a followup report by Mr. Dodds' family physician, which confirmed the opinion of the technician, of early asbestosis.

Then Mr. Dodds was seen by the advisory committee. The advisory committee, in May, allowed or recommended that the claim be allowed.

10 Their recommendation was, 'a slight disability - twenty-five percent'.

Now, the word that I would note there is the word 'slight'. Now, as Barth indicated, and as I think I indicated in my own brief, the word 'slight' seems to be a pretty flexible word in the jargon of the Board, and it can be applied probably from zero to forty.

15 In this case, it was used to apply to twenty-five percent. So whatever slight meant, currently twenty-five percent was in the range of slight.

20 That was in May of 1975. Now, one of the first oddities of this case...and again, I'm not sure exactly how it came up, but as you will note in the summary, as of September 7, 1975, Dodds was awarded the supplementary benefits, so he was getting a hundred percent of...not a hundred percent, but he was getting the full pension.

25 DR. DUPRE: Those are the supplementary benefits, by the way, that can be paid pursuant to subsection five of section forty-two of the Act?

30 MR. UBLANSKI: Right. Those are the same benefits that in Barth's study they say they can't pay because it would be improper to give it to people in this position, because they aren't rehabilitatable, or they can't participate in the voluntary rehabilitation program so therefore they don't qualify.

5 MR. UBLANSKI: (cont'd.) Yet they are pretty flexible on that, and I think I heard this morning somebody else mention that somebody else had been on it, and certainly at this point, as I indicated, Dodds wasn't working and I suspect was not capable of working and probably was not really actively searching for employment by that point. So although they say one thing, the file shows something else...in isolated cases.

10 The problem, I guess, with that is how do you distinguish...and I've had, certainly, other cases where I've tried to get the same type of benefits for people with the same, in the same range, and yet I get the standard answer at that time - no way, you don't qualify because of the second piece of section 43 (5), when I know that that doesn't apply across the board.

15 DR. DUPRE: Could you just refresh me? What do you mean by the second piece of section 42 (5)?

20 MR. UBLANSKI: 42 (5), or whatever it is now, the first part is that where the...where your impairment is significantly greater...where the impairment of earning capacity is significantly greater than usual for the nature and degree of the injury, the Board may supplement.

DR. DUPRE: Right.

25 MR. UBLANSKI: Then they go through all that, and then the last four or five lines:

"And provided that he co-operates in and is available for medical or vocational rehabilitation program which would, in the opinion of the Board, aid in getting him back to work or accepted as available for employment which is available and which in the opinion of the Board..."

30 DR. DUPRE: That's what I just wanted to...

MR. UBLANSKI: So that's the second piece. When they

5 MR. UBLANSKI: (cont'd.) don't want to give it to you, that's the piece that they use, and that's the explanation that is given in Barth's study for not having a greater resort to that second section, which in my view always has been the proper section to apply to these particular people.

10 I have never understood why impairment of earning capacity has been interpreted by the Board to be related to an impairment of function. I would have read it the other way - impairment of earning capacity, to me, would suggest a disability rather than this physical impairment. But they have always gone the other way and I have never understood that or never agreed with that.

15 DR. UFFEN: This is interesting. The word impairment can have two uses, then. It has...

MR. UBLANSKI: In itself, but then when it goes on and says impairment of earning capacity, to me that removes the doubt and I would have thought that impairment of earning capacity is much broader...

20 DR. DUPRE: It's extended from the medical to the socioeconomic?

MR. UBLANSKI: Yes.

25 DR. DUPRE: I'm just delighted, again, to have your view on that, because when the Dodds case got me to reread section 42 (5), I heard even louder sounds of gravedigging where that distinction between impairment and disability are concerned.

30 MR. UBLANSKI: I think, as I said, in my view he was entitled to it, but the Board has always said no, they don't apply it in situations like that, yet they do in this one or that one. Why...again, I wasn't there and I don't know what was happening in the background, but you know, looking at it on paper there is a peculiarity there and that's the first peculiarity in the file.

5 MR. UBLANSKI: (cont'd.) And not an insignificant one, although I noted that Dodds was...or whoever was advising him at the time, was certainly quick to appeal that as well, and not be satisfied just because you were getting the full benefit, because of the significance of the rating. So it was appealed at the time in an attempt to up the rating, but that was unsuccessful, of course.

10 Now, Dodds was examined again by the advisory committee in April of 1976, and at that point he was increased to forty percent. I don't know if it was in this report, but certainly somewhere in the file later on, again the word 'slight' is used to describe forty percent.

15 It may not have been in this particular letter, but it comes later.

20 Now, there isn't any indication, I don't think, in the material there as to why the rating was increased. They don't mention whether it was x-ray or pulmonary function, but what did bother me about that letter...and that gets me into some comments about the advisory committee...I said in my brief that...and this is before I really knew much about the inner workings of the advisory committee...that certainly from my perspective and from the perspective of most of the people that I talked to, they never distinguished between the two.

25 What I think this particular letter indicates is one of the reasons why. Now, I have some difficulty understanding why somebody from the advisory committee on chest diseases would be putting in a letter back to the, I guess to the medical consultant on chest diseases, that observing that the employee was drawing a hundred percent compensation at the time, until he was unable...sorry..."until he is able to locate suitable
30 employment", but it was felt that some situation...or that that situation should not continue indefinitely and that a

MR. UBLANSKI: (cont'd.) permanent decision should be made.

5 Now, I could be wrong, but I don't really think that that had anything to do with the advisory committee.

Now, there they are making recommendations that Dodds should be cut off the temporary supplement, quote, supposedly an independent body.

10 Now, I think if you are going to make that kind of recommendation or get involved in the claim to that extent, I think you are going to lose something in the way of your being perceived as objective.

So I found that to be objectionable.

15 DR. UFFEN: Could I have a quick question here, related to this?

In your brief, on page six, you mentioned another thing about the medical advisory committee: "It is not perceived as maintaining an arm's length relationship with the Board's medical staff".

MR. UBLANSKI: That's right.

20 DR. UFFEN: Would you like to explain that while we are on it?

25 MR. UBLANSKI: Well, again, that was based primarily on a couple of things in the Dodds case, although when I read Barth, and even when I read their brief that they submitted, all it did was give me more ammunition. I saw that for example Dr. Ritchie was responsible for many of the studies which turned out to be guidelines. Dr. Ritchie is a consulting pathologist. He was a consulting pathologist on the Dodds case.

30 So he is giving advice on claims matters, and he is also participating in the formulation of the guidelines. Presumably if Dr. Ritchie, for example, I presume, canvassed the literature and he certainly...and I'm not criticizing him for this, but

MR. UBLANSKI: (cont'd.) presumably he would have come to the conclusion that cancer of the thyroid was not related to asbestos.

Now, if for example, we had decided that we were going to pursue the claim along that road and say that thyroid cancer was, and maybe there might have been a new study that might have supported us, or something along those lines, but I'm saying just as a hypothesis, if we would have then gone to the Board and said that thyroid cancer is related to asbestos, we would have gone full circle, and then the matter would have gone to Dr. Ritchie for his opinion, and of course he would have come back with the opinion that thyroid cancer has nothing to do with asbestos.

So I think that was the kind of thing that I was getting at in my brief.

Dr. Grey's name was mentioned this morning. His name also came up in the Dodds file.

So I think that that was the kind of thing that bothers me about the advisory committee. It seems to be...I don't know whether it's a triumvirate or just a bipartite arrangement, but it just seems too cozy. It has the appearance of being too cozy, and that bothers me and I think it bothers other people who have to deal with the system.

You know, it's one thing to say that we've got input from here, we've got input from there, but when it starts overlapping, then from my side of the table it's just not satisfying. I just can't ever be satisfied in my own mind that I'm getting a proper hearing when it's just in a small circle of friends.

DR. DUPRE: Dr. Mustard has a question.

MR. UBLANSKI: Yes?

DR. MUSTARD: Have you ever approached them about

DR. MUSTARD: (cont'd.) the uncertainty of a medical opinion that is a fairly well-established piece of...

5 MR. UBLANSKI: Well, maybe you will hold that for a while, because I've got some material that's not in the summary that might speak to that particular point.

In one word, I don't think they have any conception of that, Dr. Mustard, to be very honest and to be brutally frank. I don't think they have any conception of medical uncertainty, and I think I can illustrate that to you.

10 DR. MUSTARD: Wouldn't that be a strong reason, then, for a more neutral, open body so the...

MR. UBLANSKI: I'm not against neutrality, but I'm just saying that I want to see it.

15 DR. MUSTARD: No, no. I'm just saying...

MR. UBLANSKI: I would love to see some neutrality, but I don't see it.

DR. MUSTARD: My point is that indeed it should be structured so that that uncertainty principle is always maintained and not hidden in professional arrogance.

20 MR. UBLANSKI: Well, that's right. I agree. I'm not disagreeing with that, but you use the word professional arrogance and I'm going to come back to that, because I think that's a very telling comment.

25 DR. UFFEN: Would you be coming back to the statement you made at the bottom of page six, and top of page seven, of your brief? I'll wait, if you are. It's a pretty strong statement.

MR. UBLANSKI: Yes. Yes, I definitely will be coming back to that.

DR. UFFEN: All right. I'll wait.

30 MR. UBLANSKI: That's also in the Dodds file.

All right. Okay, so the chest disease committee

MR. UBLANSKI: (cont'd.) recommended an increase, and that, of course, was okayed by the Board, and the supplement was adjusted accordingly.

Now, in between...or sometime after that is when Mr. Dodds started to develop the problem in the neck, he was having increasing discomfort and at that point he went to see his own doctor, who referred him to Dr. Khamsi, who was an internal medicine specialist, and had seen him back in 1974. At that point he was being treated for a benign goiter, suspected, at that time.

In December of 1976, an aspiration was done on his neck and that showed papillary masses of thyroid cells. That test, as a matter of coincidence, happened to have been done by Dr. Cass, who later did the autopsy, and there was a little memo done up by Dr. Cass at that time, who reported back to Dr. Khamsi about what he had found, and he recommended surgery.

I don't know if that necessarily would have been within his competence, but there was a comment on his note to Dr. Khamsi that surgery would be necessary.

Now, at that stage, with that result, surgery would have been an appropriate form of treatment. In fact, it would have been, as I understood it, it would have been the treatment of choice for a papillary tumor, in the normal patient.

Dr. Khamsi, together with Dr. Syme at that time, decided that Dodds was in no condition to undergo that kind of surgery, and they prescribed or they tried some chemotherapy instead.

At that point, Dr. Khamsi wrote to the Compensation Board, getting back to the summary, indicating that in his opinion Dodds was suffering from very severe asbestosis and that he was totally and fully incapacitated and couldn't return to work.

That's in January of 1977.

Apparently nothing ever came of that particular letter. There is nothing to indicate that the Board in any way responded

MR. UBLANSKI: (cont'd.) to that, but that obviously was Khamsi's assessment of Dodds' condition at that time.

Now, the chemotherapy didn't produce any results, and that's when Mr. Dodds went into Toronto General, and that resulted in the radiation treatment.

Of course he was very heavily radiated at that point, and of course the complication that arose from that radiation treatment eventually resulted in his demise.

Now, shortly after that, again there was another report from the advisory committee. That was in June of 1977, so that was about two or three months after he had had the radiation treatment at Princess Margaret.

Now, again, the findings and recommendations are: number one, slight asbestosis. So now we have the same word, slight, and we're at forty percent now.

Now, there is discussion about the chest x-rays being unchanged, but there is a further deterioration of the pulmonary function tests. That apparently didn't result in any recommendation for an adjustment of the rate, however, so they stayed with the forty percent rating even though they did observe the deterioration of the forced vital capacity, and again seem to have gone out of their way to observe that Dodds was not suitable for any remunerative employment in the near future.

His health was deteriorating, it was not thought that rehabilitation would be feasible, so again I think going out of their way to go into an area that I don't think really was before them.

Dr. Khamsi then followed up, in July of 1977, another letter, again indicating his opinion as to the extent of the pulmonary disease, and presumably this was in response to the findings of the advisory committee. Again, there is no response from the Board.

5 MR. UBLANSKI: (cont'd.) I presume no appeal or anything was filed as a result of the report of the advisory committee.

Now, of course, from then Mr. Dodds' health deteriorated substantially and he died in July of 1978.

10 Now, the autopsy was done and as you probably noted there were numerous findings. However, Dr. Cass, who did the autopsy, concluded that the outstanding findings were of pulmonary asbestosis.

Now, Dr. Cass sent his slides to Princess Margaret, and that produced another report. The observation in that report, in the last four or five lines in the summary, was that:

15 "Many, if not all, anaplastic thyroid carcinomas appear to evolve from differentiated capillary or follicular carcinomas."

He felt that such evolution may have occurred in the deceased, and "the histology of the lung metastases would be quite in keeping with metastatic, giant and spindle cell anaplastic thyroid carcinoma."

20 All right. So that...well, no, I shouldn't say that completes...then there was a death certificate, a doctor's report of death filed, giving asbestosis as the cause of death, primary cause, and listing the thyroid carcinoma as a secondary cause.

25 Dr. Cass sent in his autopsy with a report, and he added in his report that:

30 "The thyroid tumor was first diagnosed in December of 1976. It was impossible to remove it surgically because of advanced pulmonary disease. It was a reasonable opinion that had surgery been performed at that time, a cure could have resulted."

5 MR. UBLANSKI: (cont'd.) All right. So that was the material that the Board had to work with. The claim was there, the supporting material had been filed by the family physician, by the pathologist, who was not particularly connected to the family in any way, he just worked at the hospital at Ajax and Pickering where Mr. Dodds died, but certainly in my own view I don't put him in the class of a family physician in the sense that he was particularly biased.

10 Now, one might have thought that there was enough there to stop. Certainly the autopsy and the pathology report of severe asbestosis, the indication that surgery had been contemplated but not carried through, the conclusion that a cure might have resulted if the surgery had been performed, but that apparently wasn't enough. From there, I would suggest that the people involved then embarked upon a course to build a case, which would close off any possible argument in favor of allowing the claim.

15 Now, that's probably a strong thing to say, but I don't see how you can come to any other conclusion. Having started from that base, the summary notes that the medical specialist in chest diseases then telephones the pathologist, Dr. Cass, to inquire about this report that he has filed.

20 Now, again, there may not have been anything wrong when that...in that procedure initially, if he had some question, but I suggest that that isn't really what he was doing. What he was doing was trying to get the pathologist to change at least the tone or some of the emphasis in the autopsy report.

25 The reason why I say that...again, I didn't actually see the memo that this is based on, but it just seems to me that the attempt was being made to point him in another direction, and the fact is that Dr. Cass never did submit a new report based on this conversation. If....there is no indication that Dr. Cass

MR. UBLANSKI: (cont'd.) ever did change his opinion, even though these questions were put to him and these answers are noted...supposedly shading what he said previously... he never did submit anything himself to indicate that he had changed his mind or wanted to change the emphasis at all.

So, you know, we get something appearing in the file which is really, getting back to what Eissen - in his chart...you get what appears as evidence in a file, which is really no more than one man's account of a conversation, which was never followed up by a report which they had the right to call for. If they thought that a new report was necessary, they could have asked for one.

But they didn't do that. They just put it into the file as a recording of this conversation and his answers.

Now, from there they have tried to shade the pathology a bit. Now, let's try the surgical angle. So I don't know who the surgical consultant was, I didn't see that, but then an opinion is sought concerning this matter of the surgery. So the wheels are cranking.

A statement is made that: "it would be necessary to secure whatever documentation might be extant concerning the consideration for surgery". So at this point no opinion is being offered, but obviously, as I say, the wheels are turning in that direction.

The opinion is given that surgery was not likely... sorry, how did he put it...he pointed out only that, "quite rarely would it be amenable to curative surgery", and it was his belief that the majority was managed by palliative radiation.

So he is talking there about the tumor. That's the surgical consultant. I'm not sure exactly what his basis for saying the surgery of choice would be radiation (sic), but in any

5 MR. UBLANSKI: (cont'd.) event he is laying some
groundwork there, and obviously throughout the case you will see
that we were at one point, they were at another point, throughout
our whole argument. We had always focussed our attention on what
had happened at the initial stage back in December of 1976,
whereas the Board were never interested in that, really. They
were simply interested in what happened in March of 1977, when
the treatment was done at Princess Margaret and when the tests on
10 the tumor at that point showed a much farther deteriorated tumor,
and so that was what the force and the focus of their attention
was always directed at, and this memo is the first indication that
they were going in that direction.

15 All right. Now, we are still not done. Now we've
got to do something about that death certificate, because we've done
a little bit on the pathology, we've done a little bit on the
surgical aspect of it, but we've got this death certificate in
front of us that says asbestosis. We've got to do something about
that.

20 As I say, it's hard to approach this thinking all
this happened by accident.

25 So now the file indicates that the director of the
Board's medical services, he becomes involved now, and he is
trying to track down...because apparently the death certificate
hadn't been signed...but he is trying to track down first who did
it, and he started with the, as I read it between the lines, he
started with whoever was on duty in the emergency department that
night when Dodds came in, but he found out that he didn't...he
hadn't completed the form.

30 He then went to the pathologist, Dr. Cass, to find
out whether he is the one who is responsible for the death
certificate, or if he knew who was.

Again, there is a recording of something that Dr. Cass

MR. UBLANSKI: (cont'd.) apparently said with respect to the cause of death - "caused by compression of the trachea by the effects of radiation and necrotic tumor". That, he confirmed, was the primary cause of death, so that's okay. We like that, so we'll use that.

Secondary cause of death would be asbestosis. He didn't like that answer.

DR. UFFEN: Excuse me. Is there one death certificate or two death certificates, or one unsigned death certificate plus an opinion?

MR. UBLANSKI: I think at this point there was one unsigned death certificate. I gather from the file, the part I was just going to, I think Dr. Syme later filed another one that was signed.

DR. UFFEN: All right.

MR. UBLANSKI: But in the course of this journey to try to track down who was responsible for the death certificate, there was first the contact made with the doctor who was on duty that night, he was apparently not responsible. Then they went to the pathologist, and I don't know whether they would have thought... Dr. Mustard would know better, whether he would have been the one to have filed that kind of a certificate or not. I don't know. But obviously some questions were asked of him to try to discredit what was in the death certificate.

The death certificate had listed the primary cause of death as asbestosis.

DR. UFFEN: Pardon me for stumbling over this. An unsigned document is a nondocument. I mean, if it's not signed...

MR. UBLANSKI: Well, presumably the signing could have been cured easily enough. That wasn't the problem. The problem was what it said. I assume that they assumed...I assume that when you find out who did it, you could correct the error as far as

MR. UBLANSKI: (cont'd.) the signature was concerned.
The problem wasn't the signature.

5 DR. UFFEN: No, my problem is this, and I might as
well try to understand it now.

MR. UBLANSKI: Okay.

DR. UFFEN: You have a piece of paper with a stated
cause of death on it, but it's not signed.

MR. UBLANSKI: Right.

10 DR. UFFEN: If it is subsequently changed, we are
just changing a piece of paper which was never signed. I could
write on something and if it's not signed...is it going to be
important for me to understand whether or not this thing was
signed in the first place?

15 MR. UBLANSKI: No. No, I think the signing is just
a red herring. Really what they were concerned about was the
death certificate. I presume they had some knowledge that it was
signed by one of the doctors, they weren't sure who, eventually
it wasn't hard to find out who.

20 But the question really was, what was the cause of
death. The death certificate said asbestosis. Dr. Syme, if he
didn't do it initially, did eventually file a form with the
Board indicating his opinion as to the cause of death as being
asbestosis, primary.

DR. UFFEN: Eventually there was one signed that
said asbestosis?

25 MR. UBLANSKI: Right. Right. And I think that...the
unsigned thing, I think, just was a minor...

30 DR. UFFEN: One of the reasons why I'm sticking in
this, I can still remember testimony last summer where I was told
about death certificates being changed, and that there apparently
was a legal procedure where on some occasions you could change a
death certificate. So I'm just...I want to make sure I don't get lost.

5 MR. UBLANSKI: Yeah. I wasn't really going that road. As I would see it, all I can see there is the director of medical services having a piece of evidence in front of him saying that a man died from asbestosis, and wanting to behind that and challenge that. And he did it...first he had to find out who did it. That's the only significance of whether it was signed or not.

DR. UFFEN: He has to find out who didn't do it?

10 MR. UBLANSKI: Well, who didn't sign it.

DR. UFFEN: Who didn't sign it?

MR. UBLANSKI: Exactly. Exactly. And when he traced that, then the second problem was trying to discredit what was said in the death certificate, and that was the main concern was what was said in the death certificate.

15 So Dr. Syme was finally tracked down and he, as I say, filed a signed copy of the report of death indicating that in his opinion the primary cause of death was asbestosis.

All right. So from there the slides that Dr. Cass had taken were then sent out to Dr. Ritchie for his perusal.

20 So the pathology of Dr. Cass was apparently not acceptable and they sent it out for another opinion, to Dr. Ritchie.

Now, Dr. Ritchie's report was interesting both for what it did say and what it didn't say.

25 Now, as an aside...I won't claim credit for the observations that I'll make with Dr. Ritchie's report, because it wasn't mine...at the time we consulted with Dr. Wallace of University Hospital, who is also a pathologist and, I believe, specialized in cancer pathology. But in any event, as it turned out he was a friend of Dr. Ritchie's, and he agreed to work with us on the file and to advise us and to give us his own views.

30 Now, he came at it, in my submission, from an objective point of view. We didn't give him any instructions. We didn't do anything. All we did was drop the file on his desk

MR. UBLANSKI: (cont'd.) and ask him to have a look at it and see what he thought.

5 He then took it upon himself to follow that up with discussions with Dr. Ritchie, and did produce a report or a letter to us, with some comments.

For a number of reasons we didn't submit that to the Board, but in any event the observations are his with respect to Dr. Ritchie's report.

10 What he said to us was that what he found peculiar about Dr. Ritchie's report...if you look at...even in the summary you can see...there's nine different findings, and if you look at most of them, you will see that there's various words attached to it - acute, severe, moderate, moderate, moderate - very definite conclusions reached on the basis of the slides.

15 But if you look at the finding on asbestosis, you get a little different picture. He deliberately says 'severe in the sections taken', which while not necessarily incorrect, you know, from a...if I was a lawyer, that's the way I would have put it, too. If you are trying to duck the issue, that's the way I would have put it.

20 He didn't have any qualifications for any of the other conditions, but for asbestosis he wasn't prepared to say whether he had serious asbestosis or not. All he would say was that in the six or so slides that he had in front of him, it was severe. But he couldn't comment on whether or not they were representative of the whole lung.

25 Now, Dr. Wallace, when he looked at it, indicated that from his point of view he couldn't accept that kind of a qualification, that the only one who actually saw the organs was the person who did the autopsy, and that was Dr. Cass. The slides that Dr. Cass took were, quote, "representative in a general sense of all the various organs", including the lung.

5 MR. UBLANSKI: (cont'd.) Now, Dr. Cass, in his report, said that as far as his observations could determine there was severe asbestosis, and he took a couple of sections as being representative of what he saw, and for somebody, someone else who hasn't seen, who wasn't there, who has only seen the slides, to challenge that, he found that to be a peculiar way of approaching things. That if you were going to take that approach to all the findings and all the slides, then you wouldn't be able to conclude anything. You wouldn't conclude that he had a severe tumor either, because all you saw was one slide of a tumor and you don't know whether that's representative of the whole tumor.

10 So all one can say is, it was worded very carefully and deliberately with a sense toward denial, in my view. It could have just as easily been written the other way, or nothing said at all. But the fact, at least in this initial report, that he seems to hedge and then goes on to say he couldn't comment on whether he would have been fit for surgery or not, based on that result, I think was certainly taking a negative position that wasn't really called for.

15 I suppose...that wouldn't upset me so much, except that so much seemed to hinge on that particular report, which really didn't say all that much. You know, it wasn't really a conclusive report one way or the other, and yet so much stock seemed to be placed in that pathology report as somehow discrediting what Dr. Cass had done, and I don't think it did that at all.

20 You come to, on page ten of the summary there, there is a memo in the file from the medical consultant on chest diseases: "Following receipt of Dr. Ritchie's report"...and here we get into what Dr. Mustard raised before about uncertainty... here is a statement made that he advised that it was then absolutely clear and without any doubt that the cause of death was due to complications consequent upon radiation to the thyroid gland.

25

30

5 MR. UBLANSKI: (cont'd.) Well, I don't think anything was absolutely clear about anything involved in that case particularly, and to use that kind of a phrase to describe the findings I think is certainly overstating things and, I think, didn't even reflect what Dr. Ritchie said. I don't think Dr. Ritchie ever said anything was absolutely clear, so I don't think you could come to any conclusion that the result was absolutely clear, on the basis of what Dr. Ritchie said.

10 The statement is...there was no evidence whatsoever, no evidence whatsoever, that asbestosis had played a direct or even an indirect role in his final demise. You know, point blank.

15 He also pointed out that the medical evidence in the reports from the various doctors and hospitals contained no evidence that radiation treatment to the malignancy was not the treatment of choice initially. The absence of any consultation reports in respect of operable risk, in both the Toronto General Hospital notes and the Princess Margaret Hospital notes, suggested that that was never a consideration.

20 Now, up to this point it would appear, to be fair, that the only material that might have been before the Board with respect to that had been Dr. Cass's report. They didn't apparently, at this point, have anything from Dr. Khamsi...which, I might note, I find rather unusual.

25 Now, here they've gone out and got reports from surgical consultants, from pathology consultants, and yet they haven't got a report from the man's own internal specialist. They didn't think that was necessary.

30 So, you know, it may be true that at that point there was...it might have been a little bit clouded in the file that they had before them whether or not surgery had been considered, mainly because they hadn't really gone to the person who was in charge of the case, to ask him.

MR. UBLANSKI: (cont'd.) As a matter of fact, that was the last thing they did, the last thing they did, after they had done all the rest of it, was go to the man's own doctor.

But I think, again, a lot was made of the absence of the consultation report and in looking at the transcript, again, of the appeal hearing when Dr. Khamsi testified, and what I read out of that was that basically what he was saying was, he wasn't concerned with whether or not Dodds might survive the surgery. It was the post-surgery that they didn't think he could handle, the fact that because of his lungs being in the condition that they were in that he would never have survived the post-operative complications, and certainly that is the kind of thing that eventually did him in anyhow.

As I understood their position...and I could be wrong... but that's what I understood them to be saying in terms of their decision not to operate. It wasn't a case of could he survive the operation that day. It was beyond that - the fact that he would have to have a certain amount of capacity to be able to spit up the sputum that gathers in the lungs, and that that was a breeding ground for infection, and that's eventually what killed him anyhow.

But that was totally ignored, totally ignored in all of this and even later when his own doctor said as much in the appeal hearing.

But what was important was that there wasn't any report from a surgical consultant on the operable risk. That was the point that was fixed on by the Board's people. That was a key point.

All right. Now, still apparently not satisfied, they went back to Ritchie to close off the last hole. Maybe they had us on the direct evidence of cause of death, but we still had this indirect argument that we were going to make.

So they went back to try to close that one off, they

5 MR. UBLANSKI: (cont'd.) went back to Ritchie again, and again he gives an opinion in the course of his letter that the asbestosis did not in any way reduce life expectancy. So that closes out...I presume that was intended to close out that last argument that if there wasn't any evidence to support a, you know, a difference in life expectancy, that we couldn't argue that asbestosis had indirectly caused death.

10 So he gives the opinion, and I'm not sure of exactly what he had in front of him to base that opinion on. I don't think he had very much in the way of what had happened in December of 1976. What he had in front of him was the March, 1977 stuff from the Toronto General.

15 So again, being fair to him in this particular sense, I think that again the conclusion might have been predestined based on the material he had in front of him. He was giving an opinion based on March of 1977, and we weren't even arguing that.

DR. UFFEN: I got lost. You say 'we weren't arguing'. Who is the we?

MR. UBLANSKI: The 'we' is me.

20 DR. UFFEN: In what capacity?

MR. UBLANSKI: Representing the widow. I'm getting ahead of myself there, to the appeal hearing. When we got to the appeal hearing...

DR. UFFEN: You were legal counsel for the widow?

MR. UBLANSKI: That's right.

25 DR. DUPRE: On behalf of the ECW union?

MR. UBLANSKI: Right. Right. I got ahead of myself there and I said...I may have confused you. When it finally got to the appeal stage, that was our argument, that in December of 1976, the man had an operable tumor and that he was denied the opportunity to have surgery because of his lung condition. It was a very simple argument, as a matter of fact, and deliberately so.

30

5 MR. UBLANSKI: (cont'd.) We had made that decision that we would present a very simple argument that we thought was pretty well documented and was going to be supported by the doctors who were involved in the decision.

10 Now, I guess the advisory committee comes back into the picture and I was interested to note in Barth's study, on page three point seven, he says that decisions with respect to death claims are not usually referred to the advisory committee, but this one was.

15 Now, I'm not sure what to make of that particularly, but certainly I have to say I was disappointed with what came out of the advisory committee at that stage. This is now January of 1979. I presume they had a copy of the autopsy report available to them, had everything else there, and yet the report that came back from the advisory committee virtually upheld everything that had come before.

They stated that:

20 "The clinical evidence for asbestosis prior to death was circumstantial."

25 That may have been true, but having had the autopsy in front of them I would have thought that it wasn't circumstantial anymore, but they never referred to the autopsy.

30 It was reminded that the allowance was raised from twenty-five percent to forty percent in 1976, because of 'slight' deterioration of pulmonary function tests, but not of such change radiologically. So obviously the x-rays seem to have played a fairly important role as far as the advisory committee was concerned.

Again, I'm not sure why or what business they really had of getting into this, but then they go on and say it was also agreed that the deceased could have undergone surgery for thyroid, as far as his respiratory system was concerned.

"His respiratory status as late as May, 1977, would

MR. UBLANSKI: (cont'd.) not have precluded any operative procedure."

5 I don't know what that was based on. Again, I find it rather distressing, really, that a body of the type that that is would really get into the nuts and bolts of a case to that extent - to just jump in with both feet like that and take a position that may or may not have been based on all the evidence available.

Why get into that? Why get into that?

10 DR. DUPRE: Now, counsel, at this point you have posed a rhetorical question that is not entirely rhetorical. I have to now share with you that we have a problem.

MR. UBLANSKI: Is that why everybody is shifting in their chairs?

15 DR. DUPRE: The immediate problem that we have is the following: I know you have come all the way from London...

MR. UBLANSKI: Yes.

20 DR. DUPRE: ...however, we have with us Mr. Floyd Lefebvre, who has come all the way from Cornwall. He has to make a six o'clock train and at this point I wonder if I could indulge on you to do the following - if I could ask you to permit Mr. Lefebvre to make his presentation, and then we will have you back at the presenter's table and do what we can to finish things up.

MR. UBLANSKI: Okay. I just have one other area that I want to get into.

25 DR. DUPRE: Okay. Fine.

MR. LEFEBVRE: I won't be long.

DR. DUPRE: If you please, Mr. Lefebvre, you have been most patient and we are much in your debt, sir.

30 MR. LEFEBVRE: Well, I don't represent anybody but myself, and the only reason why I'm here is because I'm losing too many friends.

DR. DUPRE: Please sit down.

MR. LEFEBVRE: Yeah, I have to take it easy.

5 We worked in asbestos...I worked for Dom Tar Construction, as you know, for quite a long time.

DR. DUPRE: For Dom Tar?

MR. LEFEBVRE: Yeah, Construction Materials. We made pipe, the same as Mr. Cauchi, I guess, but different. We used coal tar pipe.

10 DR. DUPRE: Are you in the Insultators union, by the way?

MR. LEFEBVRE: Pardon?

DR. DUPRE: Were you with the Insulators union, the group that Mr....

15 MR. LEFEBVRE: No, I'm with nobody. I'm just with myself. I was with the union for twenty some years, and then I went on staff. Then since 1977, I have been on long-term disability.

That's why I got to catch a train. I haven't got the money to stay here tonight.

20 I would just like to...I hear a lot of people talking about other people, but I'm going to have to do it my way. It might be a little funny, but I'm going to have to do it this way.

You are medical people. I'm going to have to show you what I've got to go through four times a day, and I'm due.

25 This is Beclovent, for reactive airways disease. I have to do that four times a day.

Now I have to take Ventolin Salbutamol. I have to do the same thing four times a day. Marvellous stuff.

This is Choledyl, two hundred milligrams.

This is Choledyl, one hundred milligrams.

30 According to my pill book, two hundred milligrams four times a day is sufficient, but I have to take seven hundred

MR. LEFEBVRE: (cont'd.) four times a day, which is twenty-eight hundred milligrams. That's all for the respiratory tract.

This is Ventolen. It's a Ventolin tablet, the same as the Salbutamol. I have to take that, sixteen milligrams a day.

These little suckers here, I have to take that when my nerves get bad, when I'm too long at something, and that's Serax. You can understand what they are, sir.

You know when a person waits and he's on all that stuff, well, my breathing bothers me.

So I just wanted to show you what it is, what asbestosis in my opinion is doing and what it has done to my friends - put them in the graveyard and everywhere else, and nobody seems to care.

This little sucker here is called Intal. This is on the Spinhalator. It's a little capsule. You have to take that four times a day. I'm so damn nervous I can't even put it on. I have to do that quite often.

Now, I'm blaming it all on...and I'm not saying... I'm not fooling, you know. My name is on all these, sir, if you want to...I would like to just read off what I have here.

Even my eyesight is going, my God.

The reason I'm here is I believe that asbestos used by Dom Tar Construction Materials during my employment is a strong contributing factor to my respiratory problems. I will, during my submission, supply the Commission with some medical statements by my doctors in Cornwall, and the Kingston General Hospital doctors, assuring the Commission that I have reactive airway disease or obstructive airway disease or obstructive lung disease.

Also, a statement by Dr. Shanks, which is the company doctor and Confederation Life Insurance doctor. I will

MR. LEFEBVRE: (cont'd.) also give some history of my activities during my employment.

5 I started my employment with the company on July 21, 1951, as a millhand. I believe it was late in 1972 when I was asked by the company to take a position on staff as a production foreman. I was a production foreman until my illness in 1977.

10 I then went on short-term disability and my illness wasn't improving any, so they put me on long-term disability which I have been on ever since August of 1977.

In September of 1978, I did apply for Workmen's Compensation, claim number...I have it listed here. I was rejected, and then I was granted an appeal hearing.

15 I cancelled out because of my health. There was too much frustration and it was causing me breathing problems, and I had the feeling I was taking on the government and company all by myself, and I just couldn't hack it anymore. I had to pack it in.

I have a psychiatrist's statement there saying it was too upsetting and it was affecting my breathing.

20 I contacted Linda in regards to getting information for me from the mobile x-ray unit that visited our plant during the 1950's and 1960's. On the mobile unit report you will find names of employees, including my own, who had to be x-rayed because of handling asbestos. I will also list some of the names of the employees who have died prior to retirement age, which made me concerned of asbestos...also, names of employees who had skin cancer, also names of employees who have respiratory problems at the present time.

25 I'm not sure if these deaths and illnesses are job related. I believe this is why you have the hearings.

30 I am quite sure the Commission can get the information to verify this statement from the mobile x-ray unit. I am also sure that the death information statements can be released by

MR. LEFEBVRE: (cont;d.) Confederation Life Insurance.

5 They paid out policies, they paid out insurance, they paid claims. They must know who died and who didn't.

These are the people that I know that handled the product the same as I did, and they are gone now. They are not here. That's what made me concerned.

10 There's a Howard LaLoxide...do you want to hear the names, sir? Or you don't care, eh?

DR. DUPRE: If you want to let us have that...

MR. LEFEBVRE: I'm going to let you have the whole thing.

DR. DUPRE: ...as a document.

15 MR. LEFEBVRE: I'm going to give you all the papers, too.

DR. DUPRE: Okay. Well, that will be just fine.

MR. LEFEBVRE: Okay.

20 On two occasions before I came here, I have asked the company for my attendance records to prove that prior to 1977 I wasn't an habitual lateness man and I didn't have the sickness that they claim I have now.

25 Well, they wouldn't have put me on staff, I don't think, if they thought I had a poor attendance record. Well, maybe Dom Tar does some funny things, but I wouldn't think that would be one of them.

The product we made was...I've probably got the wrong spelling here...bituminous material coal tar pipe, made of asbestos, celite and water. The pipe was used for underground writing and sewage.

30 I would appreciate it very much if the Commission would get information from the department...from some department of the government...for the Canada Standards Act, because that's

MR. LEFEBVRE: (cont'd.) what we had to follow. Maybe they would tell you what strength it was, was the asbestos fibers mixed in with the paper that made the pipe. They would know how much, you know, if you wanted to get the information. I can't get it.

The jobs held by myself were a lift truck driver unloading asbestos with the lift truck and some by hand. I was also a beater operator who had to handle two hundred pounds of asbestos to a thousand pounds of paper per batch. We had approximately ten to twelve batches per shift.

Well, that will all cut down.

Then we also had to form that wet, then it had to be put into a dryer and dried, and then resawed at the other end of the oven, and that created a dust where the asbestos fibers was in.

During the peak season, approximately forty ton a month we used, of asbestos. We have purchased asbestos from Johns-Manville and from Thetford Mines, Quebec.

I'm not quite sure when the company discontinued the product. I think it was 1974, 1975. I'm not quite sure. But we don't make the pipe no more, so I think we've locked the barn after the horse was stolen.

I would like to list some of my activities during the 1950's and 1960's, to prove how active I was in sports and work, and let you decide if I sound like a man that had reactive airways disease or obstructive lung disease while I was employed there.

I used to play hockey, used to play softball, I bowled twice a week, I golfed, I played fastball, I curled, I officiated in minor hockey, lacrosse, broomball, fastball, baseball, coached and managed girls softball teams. And just took another little trip there not too long ago - I tried to get an oldtimers

MR. LEFEBVRE: (cont'd.) softball team to play just to get money for disabled people or handicapped people in sports.

We did, and I had to quit that.

Also during my employment in the 1950's and 1960's, I just got married and started out, I had to have two jobs. I drove taxi and I also drove for Eatons in my spare time, if I had any.

Now I'm restricted to maybe a game of golf, and I'm not talking eighteen holes. Some days I can play eighteen holes, some days I play eleven holes, nine holes, whatever. The people that I go with are very understanding. They are willing to pack it in whenever I am, so I'm quite thankful that I have a few good friends around - left, living.

I donate quite a bit of my time now to either driving handicapped people to Ottawa and Kingston, I do a bit of volunteer work for the Cancer Society.

I must say I have a disability pension - it's not much, but it's a bit, and the thing I don't like is the hammer held over your head that you never know when they are going to cut you off. They already did me off.

DR. DUPRE: Can I ask you, is that disability pension related to an asbestos condition?

MR. LEFEBVRE: No, sir. They won't admit it. That's when I had the trouble.

I accepted that as a, you know, without going any further. But it seems that if there's that much asbestos around that plant at that time, and all my friends dying off, and respiratory problems like you wouldn't believe...the medication I'm on - I just went through it - is twenty-eight hundred milligrams of Choledyl, sixteen milligrams of Ventolin, eight puffs of Ventolin Salbutamol, eight puffs of Beclovent, Intal tablets when required, Serax when required. My doctor has a lot of

5 MR. LEFEBVRE: (cont'd.) confidence in me. She lets me decide. There's lotsof times you go three or four days and nights you can't sleep. I guess the medical profession understand that it does cause you to stay awake and give you a bit of a problem.

10 I also go for frequent visits to the emergency at the hospital. My doctor has a standing order there where I have to go in and take Ventolin saline treatments, with the oxygen.

15 Other things I had to do - I had to give up smoking. When I went to Kingston...I don't know if you are familiar with Dr. Munt, Dr. Waggle - they were the respiratory specialists - and I told them I was trying to quit and they said if you don't quit, you're quit. If you don't quit, you don't walk in that door again. So that was the day I threw the cigarettes away and never touched one since.

20 I had to give...well, it was kind of rough on my family...I had to give up my pet dog, a Dalmation. They made me get rid of it. They made me get rid of a parrot I had. It was hard on the kids.

25 I had to purchase a medical bed. I had to get rid of my oil heating system. They thought that gas would be a lot cleaner.

I got an air conditioner, an air purifier. I had to get all that stuff because of my respiratory problems.

30 But I thought by getting all that stuff I would be okay, but you know, I'm not any better than I was in 1977.

I'll show you...there's a thing I have here...in 1977, August, the number of days...I was admitted five times, I made twenty-seven trips to the emergency before I went to...that's when I decided that I had to get specialists to treat me, which was Dr. Munt and Dr. Waggle in the Kingston General Hospital.

I'm going to submit to you...oh, I just wanted to

5 MR. LEFEBVRE: (cont'd.) tell you I'm here at my own expense...I want to submit to you statements from Dr. Munt, Dr. Waggle, Dr. McKeown, Dr. Billsinan, Dr. Ahmed, Dr. Fleetham, Dr. Bengner and Dr. Martin. You will see in the statements here that they all say the same thing - that I have obstructive lung disease or reactive lung disease.

10 I'm not here to get a pile of money or that kind of stuff. I would just like to be in a position to say look, you've got it, you've got to live with it and it looks very much like I'm next to go because my friends are all going, and that could happen. I'm willing to accept that, but I think maybe by being here today I might be able to help somebody else.

15 I hear the gentleman...I forget his name...but what can you do about these things? There's lots you can do. You can take your inspectors and take them off of the eight-thirty or the nine-to-four and put them on a three-shift basis and let them walk into plants at night, not in the daytime. Everybody is running around with a broom in the daytime and there is somebody always steering you here and steering you there, you know. That's
20 nothing new, but it's a fact.

I think if they put these...and I think the best guy for the job would be me right now, because I can walk into a plant and the minute I smell dust, I choke and I know there is something wrong in there.

25 So I don't know what more I can...is there any questions you would like to ask me? Or whatever?

DR. DUPRE: Frankly, I, for one, have a question.

During this time period that you worked for Dom Tar Construction, did the medical surveillance branch of what was then the Ministry of Health ever come around and take x-rays of
30 you and your fellow workers?

MR. LEFEBVRE: Yeah, that's what I'm saying. That's

MR. LEFEBVRE: (cont'd.) what I say here, sir.

DR. DUPRE: Okay.

MR. LEFEBVRE: Maybe you missed part of it, eh?

DR. DUPRE: Yes.

MR. LEFEBVRE: I contacted..in regards to asking Linda to get me the information, because our names...my name and a few of these other people that I have listed here...their name is one of the people that had to be x-rayed when that mobile unit came, because of our handling of the asbestos.

DR. DUPRE: Now, have you ever made inquiries about your own case, by writing to the Ministry of...

MR. LEFEBVRE: No, sir. When you are well, you don't bother with it. It's when you're sick, man, you start seeing people going, you know.

DR. DUPRE: And since you got sick, did you ever inquire about your own case?

MR. LEFEBVRE: My own case? I'm asking you to do that, sir.

DR. DUPRE: Okay. That's what you want us to do?

MR. LEFEBVRE: Yeah.

DR. DUPRE: I see. Okay.

MR. LEFEBVRE: And I would like you to see if you can, you know...I don't know if I'm entitled to Workmen's Compensation or not. I can't take the hassle. I can't afford a lawyer. I can't do that.

But I know one thing, that all that stuff I take is costing me sixty dollars a month, or sixty-six dollars a month, and if I get off this long-term disability, sir, I can't take that stuff. I might as well go and dig a hole and dig it myself and save the expense, because I won't be able to buy that. I don't get that much now.

But I would just like maybe...I don't know...what

MR. LEFEBVRE: (cont'd.) are you going to do for me, sir? May I ask? What can you do for me?

5 DR. DUPRE: Frankly, I don't know what we can do for you, but we can try to do something.

MR. LEFEBVRE: I appreciate that - anything.

DR. DUPRE: But I don't know what it is.

Dr. Mustard, did you have any...?

10 DR. MUSTARD: I would just be interested to know how many claims, if you know of how many claims to the Compensation Board for asbestos-related disease have been put in by your workers at the Dom Tar plant?

MR. LEFEBVRE: None, sir. They are scared.

DR. MUSTARD: None of it put in?

15 MR. LEFEBVRE: No, they are scared of harrassment, same as I am here. I am scared of harrassment by coming here.

DR. MUSTARD: From the company?

MR. LEFEBVRE: Mmm-hmm. Maybe the insurance company as well.

20 DR. MUSTARD: The disability is from the insurance company?

MR. LEFEBVRE: Mmm-hmm. I'm scared. They did cut me off. They cut me off for six months. I have a good, understanding wife. Maybe that's...I don't know. It was pretty close there.

25 In fact, sir, I've got to tell you this: I couldn't talk to them anymore.

DR. MUSTARD : But how many workers would have been exposed to asbestos during your career with the plant?

MR. LEFEBVRE: Mostly all those guys that I'm going to mention off here...

30 DR. MUSTARD: Well, fifty, a hundred?

MR. LEFEBVRE: Oh, God, yeah. At least that.

You see, at what stage, sir? But we all didn't

5 MR. LEFEBVRE: (cont'd.) unload, we all didn't work on the beater where we had to handle it, but the people that I can name off here - if you are going to check into it - Mr. Lalonde as a beater operator, Mr. Ullmay was an unloader, Mr. Pitre was an unloader, Mr. Willis was an unloader, George Cooper was a beater operator, Fern Pilon was a beater operator, Clarence Wereley was a beater operator, Robert Cameron was a production forman, James Cleary, Anthony Parisien worked on the beaters as a beater operator, 10 Gerry LeGault worked as a beater operator, Garnet Eamer.

You know, I could go on. These are all people that are gone now, sir. That's why I got concerned, and I think you can understand why.

Is there any other questions?

15 DR. DUPRE: I have no other questions, but would you please leave those names with us?

MR. LEFEBVRE: Yes.

DR. DUPRE: We are not directly, I don't think, in a position to help you, but we are in a position to get in touch with an agency that might be able to help you.

20 MR. LEFEBVRE: Sir, there's some people and some doctors I didn't even mention. There's a Dr. Conway, Dr. Wolinsky, a Dr. Young, Dr. Hugh, Dr. Lorimer. These are all people that treated me.

Okay, I'll get it all together. Thanks very much.

25 DR. DUPRE: Thank you very much for coming, Mr. Lefebvre. I appreciate the amount of time you spent waiting for us.

MR. LEFEBVRE: That's all right. I'm just trying to help somebody.

---Mr. Lefebvre retired

DR. DUPRE: Okay, Mr. Ublanski.

30 MR. UBLANSKI: Okay. I think I was at the point of commenting on the fact that the advisory committee was being

5 MR. UBLANSKI: (cont'd.) used as a consultant, really, on a claims matter, and rendering a decision that I just don't think was within their terms of reference to be getting into.

10 Again, I think if you want to keep, if you want to have an advisory committee that is perceived as such, perceived as being an independent body, it seems to me that it's unwise to have that body intertwined in the mechanisms of claims decisions. That's just bound to raise questions about it, and in effect
15 virtually what they did was confirm what they had already said two or three times in the past, and perhaps it was expecting more than was possible to expect them to say anything different. I don't know.

20 But certainly it doesn't provide one with any sense of satisfaction to have the advisory committee come back and say well, everything we said before still stands and we are not changing our opinion, and really not even refer to the autopsy as such. It's even calling into question what might have been concluded previously.

25 Now, as I mentioned earlier, I have gotten ahead of myself at one point, and then the last thing that was done was apparently the director of the medical branch then, seeking to tie up loose ends or whatever, he then finally gets around to discussing the matter with Dr. Khamsi, who is the doctor who treated Mr. Dodds and who did in fact make the decisions concerning his management.

30 At that point Dr. Khamsi again repeated basically what I've said a number of times, that the initial tests showed papillary cells, he would ordinarily have operated but because of the chest condition he decided that was not a reasonable course to pursue, and that course led him down the path towards radiation treatment, in March.

5 MR. UBLANSKI: (cont'd.) Now, having recounted that, the memo that goes into the file is apparently the director of the medical branch confirming the recommendation of the medical consultant on chest diseases that there was no evidence upon which the acceptance of a death claim, due directly or indirectly to asbestosis, could be justified.

10 Again, all you really have there is a recording of a conversation, no medical report apparently was thought necessary, and it ends up in the file as a recommendation of the director denying the claim.

From there the decision was issued and the result was that, quote:

15 "The consensus is"...this is, sorry, to put it in context: "Since your husband's death additional inquiries have been conducted, and our senior medical advisors have been in contact with several of the doctors involved, and of course have carefully studied all the medical information. The consensus is that the industrial disease, asbestosis, for which your husband was being compensated, did not directly or indirectly cause his death."

20 That was the end of it.

25 Of course then we got into the appeal hearing and as I said, the argument went basically as I put it a couple of times, Dr. Khamsi was there, Dr. Syme was there. They both testified. I don't know whether you have seen the transcript. Have you seen the transcript?

30 Now, we made our arguments and then subsequent to that the appeal board took the transcript of the hearing and sent it to Dr. Stewart for his comment, and again I think the implications of that are fairly serious for the integrity of the process.

DR. DUPRE: These are the statements you raised in your letter of July 23rd?

5 MR. UBLANSKI: That's right. I didn't realize you had that, too. I was a little steamed when I wrote that.

DR. DUPRE: We do have that, counsel.

MR. UBLANSKI: I was quite upset at the time.

DR. DUPRE: Yes.

10 MR. UBLANSKI: And I still am, because I think, again, if you go back to Eissen's comments, I think it's again an illustration of what is wrong and where the lack of clear distinction complicates things and really produces unacceptable results.

Now, Dr. Uffen is not here now and I'm getting to the point that he asked me about. Good timing.

15 DR. DUPRE: There he is.

MR. UBLANSKI: Perfect timing.

DR. DUPRE: Mr. Ublanski has just gotten to the point that you had asked him about, Dr. Uffen.

20 MR. UBLANSKI: I just indicated that we had the appeal hearing before the appeal board at the Compensation Board. They sent a transcript to Dr. Stewart for his comment. Apparently no questions, they just sent it to him for his comments.

25 He then went through the transcript and again, the statement was made by Dr. Mustard about professional arrogance, and being a member of a profession I have some appreciation of what that is all about, so I'm not totally unfamiliar with the concept. But I think that you can take it too far.

There is a limit as to how much you can tolerate under that label.

30 Now, some of the comments that Dr. Stewart made commenting on the transcript quite literally shocked me. It was

MR. UBLANSKI: (cont'd.) just completely uncalled for in the circumstances, and I think if you have seen the transcript you will understand that.

DR. DUPRE: We have those comments as well.

MR. UBLANSKI: Have you seen Dr. Stewart's comments on the transcript? Well, that's good, because as I say, I was literally shocked by those remarks, and I don't think that that can be ignored because I think it tells you a lot about what's wrong.

DR. DUPRE: I guess, counsel, the concern that I have at this point is this - that yes, I can confirm that we have seen those comments. Now, the extent to which you wish to express your own opinion of those comments might, quite reasonably, lead someone like Dr. Stewart to wish in some formal way to reply. Certainly, should he ask for this, I'm sure he should be given such an opportunity, but I guess the point that I'm reaching for, again, is keeping it at the level of the extent to which what we simply may have here is something that bears out the Eissen diagnosis of what may or may not, as a general proposition, be a problem here.

MR. UBLANSKI: I'm not particularly anxious to get into the mudslinging business, but Dr. Uffen asked me specifically whether my comment about questioning the credibility of other doctors was justified, and I think if you look at the comments of Dr. Stewart on the testimony of Dr. Khamsi and Dr. Syme, clearly he does that, and he states it quite boldly, really, without any qualification, that credibility was an issue and he suggests to the appeal board that the credibility of the witnesses who testified on behalf of the claimant could not be compared to the credibility of the evidence of the Board consultants, etc., etc.

He says right in this first paragraph:

5 MR. UBLANSKI: (cont'd.) "I am assuming from the outset that the appeal board will require of this kind of testimony that statements made, evidence presented and conclusions reached should be factual, consistent with good medical practice, and be required to exhibit equal credibility to that routinely demanded by the Board of its own consultants in the expression of medical opinion."

10 It goes on to say:

15 "The only way to put their comments in proper perspective is to examine the credibility of the two medical witnesses, as well as to establish whether statements made by them coincide with the facts as documented in the medical evidence, or with the generally-accepted level of medical knowledge in the area discussed."

20 He then goes into a discussion of Dr. Syme's testimony, says quite flatly at one point that some statements that are quoted in the transcript, which I think were probably recorded improperly, Dr. Syme is quoted as making some comments about symptoms and using the word objective, and I suspect that he was probably misquoted there and probably meant subjective, but that little slip, whether it was a slip of the doctor's or whether it was a slip of the person who transcribed the transcript, was
25 seized upon, and Dr. Stewart says, quote:

"This series of statements is simply false, suggests that the witness has no credible knowledge in the field of pneumoconiosis or pulmonary function testing."

30 DR. UFFEN: Could I just make a comment here? I want to make sure that we have a clear understanding.

MR. UBLANSKI: Sure.

5 DR. UFFEN: Earlier on I asked you a question about a statement in your brief.

MR. UBLANSKI: Well, maybe I misunderstood.

10 DR. UFFEN: No, it's all right. I'm just summing up the situation and I want to make sure that it's clear, and particularly on page six, where you had made some very definite statements about the advisory committee, about outside medical opinion and so on, and it continues on over into page seven.

Now, my understanding is that what you are now doing is, you are justifying those statements with an example from your own experience, in quoting that. You are not...

15 MR. UBLANSKI: I won't say it's an isolated incident. This is one example of what I consider to be rejection of outside medical opinion out of hand, yes.

20 DR. UFFEN: And you are quoting from this particular case for the sole purpose of illustrating the point of view you presented in your written submission on page six and seven, and in response to my query earlier in the day?

25 MR. UBLANSKI: And I go on to say that I didn't make any statement in the brief that I didn't feel that I could back up with an illustration from a case of my own experience. That is certainly, in my view, one illustration. It's not the only one that I've had. It's the most blatant example that I've had - no question about it.

30 I have had other situations where medical evidence was rejected. I have never had any case, I must admit, where the credibility of my witnesses was questioned, where their competence was questioned, where their knowledge was virtually thrown to the wind - where it virtually said that they had no knowledge, no credible knowledge, and that whatever they said didn't amount to

MR. UBLANSKI: (cont'd.) a hill of beans, really.

That...I must say, this is the most extreme example of that. I can understand some disagreement, but I have some difficulty with attacking credibility.

Really, you know, when you look at this case, what was really at issue? One doctor, in the treatment of a patient, saying that he felt in the course of that management of the patient, that he felt that he couldn't operate to remove a tumor, at a particular point in time.

Now to me, to take that really relatively simple issue and turn it into a battle of credibility, to say that...to accuse him, to accuse that doctor of denying lifegiving surgery to a patient, based on ignorance, that's a pretty strong statement to make.

DR. UFFEN: Well, as far as I am concerned, you have made your point with the illustration. Judgement as to whether your statements are justified, well-founded or not are quite another thing, and I don't think you need repeat it. I usually get the message after about the second time.

DR. DUPRE: Dr. Mustard?

DR. MUSTARD: Can I take you to the bottom of page twenty-four in your brief, and the account that you have just given.

You say, "But what do we do in the meantime..."...we have been discussing the business of Weiler and various other things, trying to get around some of the problems..."we simply cannot place the burden on workers to produce the conclusive scientific and medical proof that their claims for compensation are justified."

Many of us who have medical backgrounds have no problem in accepting the dogma of the uncertainty of medical opinion. In radiology, for example, time and time again one takes ten or twenty radiologists and has them read a hundred radiographs,

5 DR. MUSTARD: (cont'd.) blind - that is, they don't know where it came from - and repeat that ten times each, and they show considerable variation within their own observations, as well as among themselves, and we are all aware of that limitation in terms of what we can do.

Also, pathologists will testify to the uncertainty in diagnosing of cancer with current techniques.

10 Also, the problem of the signing cause of death, I think most of us will testify to the uncertainty there.

15 It seems to me the case you've gone through, the uncertainty of medical opinion comes out very clearly. So I guess really my question is, recognizing that and recognizing the problems of decisions that have to be based on uncertainty, it would seem to be very difficult to expect members of the work force to do anything better than to understand the uncertainty principle.

20 So maybe the question I would pose to you, recognizing those things, how would you have the evidence reviewed - recognizing the uncertainty principle which has to be manifest in what takes place - and secondly, when the judgement has been made where there is an uncertainty principle, what weighting should be given toward the claimant in the terms of uncertainty?

25 I didn't see you come out with that in here and I would like to know what your views on it are, because you have had a lot of experience with it.

MR. UBLANSKI: I think perhaps Dodds...in one sense, the Dodds case doesn't really illustrate that because I think it was even simpler, or it should have been even simpler than that.

30 DR. MUSTARD: Well, there was uncertainty in parts of it.

MR. UBLANSKI: There was uncertainty, but I don't

5 MR. UBLANSKI: (cont'd.) think there was any uncertainty as to what was done and why it was done. To question whether it should have been done, I thought, was going beyond the realms of a compensation system.

DR. MUSTARD: I guess I would take it a part of the story is the problem of this uncertainty and our own professional arrogance get all mixed up in the business.

10 MR. UBLANSKI: Well, as I see it, the problem...

DR. MUSTARD: I would be interested to know, how do you think one could tackle the problem in a way to perhaps provide a more satisfactory solution?

15 MR. UBLANSKI: Well, again, in a concrete...I suppose in terms of this particular case, in a concrete way, I think what Dr. Wallace did was do the best that he could with the uncertainty that existed.

20 Now, one of the reasons why, you know, as a matter of strategy...and in the end it didn't matter, because the decision was made not particularly on the merits, but it was made for other reasons, so I didn't have cause to regret what I had done, it didn't matter...but in terms of his treatment of the case, I was satisfied that he had given it the best that he could, and it probably reflected the uncertainty that you were talking about in a realistic way, as compared to the black-and-white picture that I got from the Board and the people who were giving opinions to the Board. They seemed to view things in black and white, 25 whereas Dr. Wallace acknowledged the greys. Maybe he didn't come up with the answer either, but what he did say was that the man died from the complications of thyroid cancer, and I don't think anybody would dispute that.

30 There was no evidence to link thyroid cancer to asbestos.

He also said that based on the evidence there was

5 MR. UBLANSKI: (cont'd.) no reasonable doubt in his mind that Dodds had severe asbestosis, but based on the autopsy report filed by Dr. Cass that he was satisfied that Dr. Cass was a competent pathologist and therefore when he said the man had severe asbestosis, that that was a correct finding.

Now, he then goes on to discuss the crux:

10 "The crux of the matter is whether asbestosis played a major part in his death, either hastening it or occasioning it."

You recall that Dr. Ritchie had been supplied some information to give an opinion on that, but I think probably not really having all...I don't think he had the whole picture.

15 But in any event, that probably wasn't...it was the only thing you could get a handle on in that case, if you were trying to make that tough decision.

20 So he addressed that question and to answer that he answered it in four parts. First he said that he is satisfied that Dr. Khamsi made the decision based on the factors that we have discussed, that he certainly wasn't prepared to challenge that decision - if that was the decision that was made, so be it.

He says it's impossible to say now what the best treatment for the tumor was, since it was first reported as papillary and then as anaplastic, it might not have responded well to surgery, but "it is likely that surgery could have been done as well".

25 That's uncertain.

30 "There is no doubt in my mind that the disastrous radiation damage to the spinal cord hastened his death. There is no doubt in my mind that given a patient with the tumor and the radiation change, the asbestosis and the associated right-heart enlargement hastened his death."

Finally: "Whether or not the patient would be alive

5 MR. UBLANSKI: (cont'd.) "now, had he been free from asbestosis, is the question no one can answer. However, I think it is possible he might have been alive and that even in the absence of thyroid cancer he might have died from his asbestosis by now."

10 So I think in spite of all the uncertainty...well, I guess it's a question of what you do with all that.

DR. MUSTARD: I guess really the point I am trying to get at is...

MR. UBLANSKI: Maybe I would do something different.

15 DR. MUSTARD: ...given that uncertainty, how would you like to see these claims handled in the future?

MR. UBLANSKI: I think one could reasonably have said, without changing anything...and I'm not necessarily an advocate of wholesale change to the existing system...my own view is really along the lines of what Dr. Eissen has said. I don't think that the system that we've got is running in a proper way. It is not being administered to produce results that would be, quote, "fair and reasonable".

20 I think that reasonable men can make reasonable decisions with the best information available. Sometimes they will be right, sometimes they may be wrong. Sometimes I may be happy and sometimes I may not be happy. But at least if I am convinced that it has been given the best consideration in the light of whatever information is available, then I don't think I have the right to ask for anything more, but I don't think that we are getting that. I don't think that we are getting that, and I think that that's at the crux of the matter.

25 I agree with you. We'll never get to the point of certainty. That's why I, you know, in the other part of the

MR. UBLANSKI: (cont'd.) brief I talk..and I know that Professor Eissen in his other writings has indicated where he is going on that, and I, as an individual, not speaking for anybody else, I agree with that approach.

I think that the only real answer to these problems is through a universal sickness and accident insurance system that doesn't necessarily hinge on causality, because I don't think we are ever going to get to the point where the cause will be that easily determined.

So I think, you know, having had the experience of fighting these claims, for the most part unsuccessfully, with the one exception of the Dodds case, which I think is a special case and it really wasn't decided on the merits, it was decided for other reasons, that case didn't help us with anybody else's case. It produced a pension for Mrs. Dodds, and I'm glad that it did, but it didn't do anything for anybody else. It didn't do anything for any other cases. We've lost every case since then and I'm sure we will continue to lose them in the same way we lost them before that case, so that case stands really by itself in terms of the result.

The appeal board - I assume you have seen that decision - the appeal board denied the appeal. They said the overwhelming weight of evidence was against us, so the system didn't work. The system didn't work there, as far as I'm concerned.

And I don't say that because we lost. I say it because I just don't feel we got a reasonable decision - a decision that I can live with.

I get decisions going against me every day in other tribunals. Lots of tribunals make hard decisions based on uncertainty. As long as you have given it your best shot, you've had a good hearing, you can live with those results.

I can...speaking for myself, not for the claimants.

5 MR. UBLANSKI: (cont'd.) They obviously have a more direct stake in the results, but at least I can feel satisfied at least in my position that I've done everything I can do and the system produced maybe the best result it could, given the lack of data.

10 You know, I can't ask the impossible. Unless we are just going to remove causality totally from consideration, as long as causality is going to be a factor then I think the best we can ask for is a system that produces at least a just result. Whether it's right or wrong it can still be just, and I think that's what we don't have.

15 I think we do have an adversary system at the Board, and I think it's based on the professional arrogance that you mentioned.

20 I think the evidence, certainly in the cases that I've had, of which Dodds is only the most blatant, but certainly not isolated, it's a case of Board doctors and Board consultants versus everybody else, and whatever they say, whatever they come up with, that's the result, and it doesn't matter who you are, what you get, how high you stack your pile with countervailing evidence, I have yet to see it produce any material change in the result.

25 I think that the reason that I get in reading the various documents, and I'll say one thing about this policy of getting into the files now, it's just literally amazed me, literally amazed me some of the things that I've seen in those files - what passes for medical opinion, what passes for medical consultations. It would just curl your hair, it really would.

DR. UFFEN: You have expressed many opinions and so on.

30 MR. UBLANSKI: I have many.

DR. UFFEN: What we are searching for is advice and recommendations about what various jurisdictions think ought

5 DR. UFFEN: (cont'd.) to be done, and I have in front of me a similar case. I would like to ask you if you would support this.

This happens to be the submission of the Asbestos Victims of Ontario on the Workmen's Compensation part of...

MR. UBLANSKI: I haven't seen that.

10 DR. UFFEN: Well, I'm sure that it would be made available to you.

They were pursuing...it happens to be page thirteen... they were pursuing a similar perceived difficulty, and they ended up with three recommendations. Can I get whether you would...how you would respond?

15 "One: That there be an independent final appellant body."

In other words, the appeal system, in their opinion, wasn't working right so they recommended an independent final appellant body.

The second one is also short and clear, that:

20 "Such a body...that it not be entitled to rely on any evidence other than that presented before it."

The third one, it's short:

"That the Statutory Powers Procedure Act apply to all such appellant hearings."

25 MR. UBLANSKI: I wouldn't have any quarrel with that particularly. I think that's more or less what has already been proposed by Professor Weiler.

DR. UFFEN: We get propositions from all over the place, and in my opinion what we have to do is judge their relative merit and see what we can make of it all.

30 All I'm trying to find out from you after this long discussion about the perceived failings of the appeal procedure, is whether you would endorse those three, and then I go away knowing that you do or you don't.

5 MR. UBLANSKI: Oh, there is no question that I would endorse those three. That wouldn't necessarily be my preferred approach.

DR. UFFEN: Oh, well, I...

MR. UBLANSKI: I think that...and again, I'm only speaking for myself and this is, quite frankly, an area of some controversy between myself and some other people in the labour movement, that the idea hasn't exactly caught fire.

10 DR. UFFEN: Including the people that you represent?

MR. UBLANSKI: Well, I suppose since I write most of the briefs it, in a sense, represents our view, but perhaps that would be overstating it. It certainly represents my view.

15 Based on the experience I've had, for what it's worth, I just don't see causality, you know...I've heard Professor Eissen and I've read some of his writings, and I just don't...and I guess I learned a valuable lesson last summer when I listened to the people whose studies I had been reading. You know, something that sounded so good on paper just didn't have the same impact when I started to listen to it and hear their qualifications and the problems associated with the research.

20 So all that did was entrench what probably would already have been my inclination, that having wrestled with the idea of causality and having wrestled with the medical profession in trying to get them to be more specific and to come out in clear cut ways to say black is black and white is white, and finding that I just couldn't do that.

25 Again, not only in asbestos claims. Just across the board. Trying to pin people down to say things in black-and-white terms, I just have come to point where I don't see that as being a realistic objective, certainly in the short term.

30 I just don't think it's there, and you know, when I look out in the audience this morning and I see those widows, and

5 MR. UBLANSKI: (cont'd.) other people, claimants on ten percent or twenty percent who haven't worked in years, apparently can't work and far be it from me to judge whether they can or can't, I take them at face value. They have medical opinions supporting their positions. They are totally disabled whether it is totally disabled from asbestosis or some combination of asbestosis, lupus, arthritis, whatever.

10 I don't see those decisions as being really within the realm of possibility to determine, despite what the Compensation Board tells me in their decisions. They seem to be able to come up with these clear-cut answers. They don't seem to recognize any uncertainty in their...certainly in what they put out, and you know, I seem...the persons representing the claimants are the ones who are plagued by uncertainty in trying to muster
15 evidence to counterbalance this supposed certainty that really doesn't exist. So how do you fight something that you can't...you can't fight on their terms because they are always so certain they have got all the answers, and all you can get, at best, is uncertainty.

20 My own view is, uncertainty is the right answer. I don't quarrel with the uncertainty. I think the uncertainty is where we are at, but I just don't think you can fit that into industrial disease. I think the whole matter of industrial disease has to be taken out of the compensation system. I just don't think it belongs there, and that's what disturbs me about
25 the Weiler recommendations not really recognizing that.

30 Now, maybe something subsequent will, but that's why in my brief I expressed the concerns that I have...if we are trying to apply that kind of a system to industrial disease, because I don't see that as being any better. In many ways I see it to be worse, and it skirts the issue. It's still going to produce the same kinds of problems, only in a different context.

5 MR. UBLANSKI: (cont'd.) It's not going to improve the situation at all. All it will do, in my view, is take away the ten percent that the ten percenters have got. They will end up with nothing instead of the ten or twenty or twenty-five, or whatever it is that they are getting now. I am convinced that under that kind of a system they will end up with nothing.

10 So I don't think...I just don't think you can put the traditional accident compensation mechanism to work in a disease context. It's just not the same. You can't compare broken legs and broken arms to a chest condition...a progressive chest condition at that. It's not even a stable condition.

15 DR. DUPRE: Granting the validity of that for the sake of a philosophical argument, I guess a problem that I have is that if I look to that in some form, that you mentioned on page twenty-five, of universal sickness insurance, where I certainly, you know, wouldn't argue with any of a number of possibilities that I see there, where I do pause is on the following point: That in a world in which resources are limited, one possible danger of a universal sickness scheme is that it might lead to a situation where the issue of industrial disease simply drops from sight.

20 MR. UBLANSKI: Mmm-hmm.

25 DR. DUPRE: And whatever the disadvantage of our present system, I would at the moment not likely let go of at least one advantage - namely, that it very clearly recognizes the possibility of disease arising from the workplace and of being compensable as such, because it arose in the workplace...

MR. UBLANSKI: Well, I can make a couple of comments.

DR. DUPRE: ...as opposed to elsewhere. Can you help us?

30 MR. UBLANSKI: Well, that's the response that the labour movement has had to that proposal, and that's why it has

MR. UBLANSKI: (cont'd.) gotten a lukewarm reception.

I can make a couple of comments about that, and not so much to disagree, but I haven't seen, to be quite frank with you, I haven't seen much evidence that that has produced very much for victims of industrial disease.

You know, if you look at the statistics of the number of people who are being compensated for industrial disease, as Weiler I think points out in his study, the numbers show that there is a significant gap between the potential and the actual number of people who are in fact benefiting from what we have now, which is a form of what you are saying...that we recognize industrial disease now and we do what we can to identify it and compensate people for it, but the fact is that that has produced virtually a handful of people who are presently being compensated, even though, as Weiler points out, ninety-five percent of the people on Canada Pension Plan are there for the reasons of disease and not injury.

And yet...or is it one percent of the claims with the WCB reflect industrial disease.

So there is, there is a wide gap between the people who have benefited from that, what we have had up to now, and the potential number of people who probably ought to be benefiting from some form of compensation.

So that's one comment on that. So I find it difficult to be impressed by that because it has produced so little up to this point.

The other thing I think...and I don't know whether you have pursued this area, but Dr. Eissen, in his writings, has argued that he can devise a system which will accommodate your concern, that you don't necessarily have to put that on the back burner. It's a case of, as he puts it and as I agree, it's a question of whether you put the cart before the horse, or you are

MR. UBLANSKI: (cont'd.) going to hold your victims out there, waiting until all these answers are forthcoming, or are you going to take care of your victims and then pursue the answers?

I don't think there is any...there is no necessary conclusion that one would reach that one would give up the fight. If you don't want to find out, you won't. But if the desire is still there...and you can build incentives into your system to at least generate some level of interest in pursuing it to its conclusion...but from my own view, I would put the claimants in a prior position to coming up with ultimate truth, because ultimate truth just takes too long. So I would rather have the people being compensated and living a decent life, rather than having to tromp down to this Royal Commission every six or seven months to lay their troubles before you, and believe me, it's not easy for them to do. It's not easy for anybody.

I think that maybe there is some misconception or misperception about the attitude of people out there.

I was interested in Mr. Lefebvre, who came here, for a number of reasons. We once represented that plant and don't anymore, but it's a small world. But my own gut feeling is that... and I can't prejudge the merits of his claim...but it's my own feeling that there are thousands of people out there like Mr. Lefebvre, who have suffered, don't know it, don't realize it, don't tell anybody if they do, and it's just going...they are just trying to get along as best they can with whatever is available to them, never even once giving a thought to industrial disease or the Workmen's Compensation Board or any of those issues.

It's just an enormous task. To think that because we have only had the problem at Johns-Manville, that it doesn't exist everywhere else because they haven't come to us, I don't take any comfort in that illusion - none whatsoever. Because I

5 MR. UBLANSKI: (cont'd.) know the process, and the process just isn't geared towards cases like that coming to the surface until the numbers just become so enormous that they can't be ignored anymore.

You know, it just goes by the wayside. As a matter of fact, about two weeks ago, the first time I had a call from a chemical plant in Sarnia about a case of mesothelioma in an insulator there. That's the first time.

10 Now, we've got people who have been exposed in situations like that, probably thousands, certainly hundreds anyhow, but that's the first time that a connection had ever been made... I presume because it was mesothelioma and the family doctor had probably read something about mesothelioma and asbestos, then made the connection, but in the seven years that I've been around that's
15 the first time that's happened.

I just can't believe that that's really the first time it has happened.

DR. DUPRE: I'm just interested in one thing.

20 So you get a call like that from a chemical plant in Sarnia, and it indicates, you know, for the first time that something you have been suspecting is going on may actually be out there. What's your next step?

25 MR. UBLANSKI: Well, I had a meeting with the health and safety committee, trying to get information from the company on exposures, readings. I provided information to the health and safety committee concerning things that they should be looking for among other people, trying to get them to be conscious of the disease. As I say, most of them have no real idea. They know danger, but they don't really know what to look for, what they should be concentrating on.

30 Beyond that, it's hard to know what to do. People are not very forthcoming about their medical affairs. They don't...

5 DR. DUPRE: Could I just ask you this, one thing that crossed your mind that there wasn't on your checklist that would have gone through mine, is I guess one of the first things that I would have done on receiving a phone call like that from a plant would have been to check with the Ministry of Labour to see if they were on the medical surveillance circuit. Did you do that?

10 MR. UBLANSKI: Yeah. Well, I didn't check with the Ministry of Labour. I did check with the employees, and their answer was no.

DR. DUPRE: That approach is another way, I guess, of trying to get the same information.

15 MR. UBLANSKI: Their answer was no. As a matter of fact, they showed me the...no, sorry, it wasn't that. We got into the assessments that had been done under the previous regulations for lead and mercury, and it was about yea long, and I presume the intention of the company was to do the same thing with respect to asbestos - a one-word statement that we don't have a lead problem and we don't have a mercury problem, and presumably we don't have an asbestos problem. On that basis, I presume there isn't any
20 medical...I know there isn't any medical surveillance on lead and mercury, and I presume there won't be any and hasn't been any on asbestos, because the problem just has not been addressed by the company.

25 DR. DUPRE: Just let me ask you one other thing because I don't want to worry this one to death, but I'm just interested in your views as a front-line experienced union counsel here.

30 When you get the kind of phone call that you got - mesothelioma in a chemical plant - does the other thing that has to cross your mind at that point that, of course, given the long latency period, if you want to start with the hypothesis that mesothelioma must have meant asbestos exposure, of course that

5 DR. DUPRE: (cont'd.) exposure could have taken place in any of a number of places where the individual had been employed before.

Now, I don't suppose there is any kind of an easy way where you can put your hands on the past employment record of such an individual, is there?

10 MR. UBLANSKI: No. As it happened, this individual, I think, had about twenty-six years at the one plant, so...

DR. DUPRE: All at the one plant?

15 MR. UBLANSKI: Yes. So it's unlikely...that may not present a problem in his particular case. Now, we haven't got a decision from the Compensation Board yet, so I don't know how that's going to turn out, but I presume with twenty-six years of experience as an insulator in the plant that he won't have any difficulty in that regard.

20 DR. DUPRE: Okay. Well, of course, I think that provides part of the answer to my question anyway, because what you have done...one of the first things you did on behalf of this individual is you lodged a claim?

MR. UBLANSKI: Oh, yes. There's no question about that.

25 DR. DUPRE: And, of course, from that point on it's part of the WCB's own homework to, of course, look at the past-employer situation...

MR. UBLANSKI: Right. Of course that information will all be compiled and it will be up to us to either accept or reject it.

DR. DUPRE: Okay.

MR. UBLANSKI: So they will no doubt do that.

30 Now, we've never really gotten into that much at Johns-Manville. We may have a problem here, but I don't think we will. We could in other cases, though.

DR. DUPRE: Now, I wonder if my colleagues have any more questions in this area or on the brief?

MR. UBLANSKI: Well, I hope I've been of some use to you.

DR. DUPRE: You certainly have been.

I don't want to let you go without asking what I promised my colleagues is just one question, but it is something that is of concern to me. I have flagged my concern before, but you see, your brief, indeed the brief of the ECWU, illustrates it again, and it is the statement that is so exactly made on page eight. There is a lot of statements we've heard, including from some of our individuals this morning - the statement of having worked for an asbestos-using employer as a barrier to future employment, and it's right there at the bottom of page eight.

MR. UBLANSKI: Mmm-hmm.

DR. DUPRE: And of course my concern, as you can well appreciate, counsel, is I have read this Act, the Workmen's Compensation Act, the way you have. Certainly, you know, the way it is at least sketched out in the law, both on its face and certainly in terms of the intent of those who passed the law, when you are looking at diseases that arise from hazardous substances, very clearly the intent is, of course, to place the compensation burden on employers who used the substance, who of course could be totally distinct from current employers.

I guess that what we are looking at, however, is the situation where...well, there could be one of several things.

First of all, that message may not have gotten through to employers.

Secondly, of course, it may well be that just out of a natural propensity to always want to avoid any kind of red tape, employers would be reluctant to have anything to do with the WCB at all, because it was only as simple as having the WCB

DR. DUPRE: (cont'd.) check you out.

5 But you know, the reason I'm concerned and I'm just asking you this as a senior person in the whole area, with a lot of experience, is that I detect it's a real problem. I take it as such. It is raised as a problem.

10 I'm far from certain that there is any kind of a regulatory or a legislative remedy, but maybe there is. I mean, I can see certainly an educational remedy. I can see a moral solution with employers as an alternative remedy, but am I missing anything in the regulatory or the legal realm that you think...

15 MR. UBLANSKI: Well, Weiler has a recommendation concerning bringing people back to where they came from. That's about the only tangible way that I've ever seen the matter addressed.

DR. DUPRE: And what did you think of that?

20 MR. UBLANSKI: Well, other senior people in the labour relations field have told me that would create some problems among other people, that that would affect other people in the plant and that might generate conflict within the plant, and it's not as simple as saying, you know, there may not be anybody who is willing to step aside and say come on in.

25 You know, there's other considerations and, you know, seniority may be affected, and there may be other reasons why. It's not a panacea, I don't think. It may work, but it may not work either.

30 Beyond that, I don't have any magic answers either. As you say, you can try to educate people but I don't think you can deny...as I say, you can't turn your back on that either, or turn your back on the victim of that. You've got to build that into your system.

I happen to think it's already there, but for some reason there isn't the will to view it in that light.

5 MR. UBLANSKI: (cont'd.) But I think, you know, if
you are going to...and maybe I haven't said this yet, but I want to
get this one off my chest to...I think you can tinker with the
system all you want and as I've said to a number of people, you can
devise the best system in the world - whether it's Weiler's system,
whether it's what we've got, whatever it is - but if you don't
have the people administering it who have a feel for what they are
doing and approach it from a proper perspective, it's not going to
10 do any good. You are not going to change anything.

15 That is what has disappointed me about the studies
that have been done. They won't hit that issue head on. They
won't grab the bull by the horns, and I think they are kidding
themselves, if not everybody else, if they think that tinkering
with the system...that the system itself is the real problem. I
don't see it as that. I think the legislation as it presently
stands...lots of things could be done to improve it, but I don't
see that as being the real problem. I don't think that's what
people are really upset about, I really don't. I think the system
as it is presently structured could have been used, could have
20 been administered in a far different way and produced far
different results and reactions, and wouldn't have produced this
cry for reform.

25 I think, you know, if we do change, if we reform
this system, as I have pointed out in my brief, I don't think it
will change...as far as industrial disease is concerned I don't
think it will change things one iota if it's the same people there
with the same attitudes, running it. Because they will do exactly
to that system what they did to the present system.

30 If you don't have the kind of structure that you
need to administer that thing in the ways that Eissen suggests,
if that isn't in place, then it doesn't matter what the system is,
it's going to get screwed up. It's just inevitable. It's just

MR. UBLANSKI: (cont'd.) inevitable.

5 So, you know, I just can't let that go. I can't be satisfied just to say that tinkering with the system will magically transform the problems that we've got with the Board. I don't think that will happen.

10 I think that the problems will continue. I think if we go to Weiler's system, they will intensify. If we stay with what we've got, I think they will just continue in the way that they have.

15 I think the problem just runs deeper than the legislation and the system. I think it's the administration, I think you've got to tackle that, and I think you've got to address it. If you don't, then I think that you will have done a disservice to the people that have come to you and expressed their actual experiences with the system, as opposed to some at-a-distance, armslength description of it.

20 I think you've got to talk to the people who have actually gone through the machinery, to get a real feel for what the reality of the system is.

25 I think certainly in my reading of what they are telling you...I don't think they are really telling you that the system is that bad. I think they are telling you that they have had a hell of a go with the people who are administering it, and that they have been treated unfairly in some situations by those people.

30 But I really don't think at the heart of what they are telling you is that the system itself is necessarily at the crux of the matter. I don't believe that, and I think if you questioned them you would find the same yourself.

35 DR. DUPRE: The message you are trying to give me in three words is that you think we could solve the problem with new people from top to bottom, dealing with the whole disease thing?

DR. DUPRE: (cont'd.) Is that your message?

MR. UBLANSKI: I don't know about new people.

5 DR. DUPRE: Okay. Let me stop you there, because of course people who are there now were once new people. I mean, were all new people at one stage of the game or another.

MR. UBLANSKI: That's right.

10 DR. DUPRE: Another hypothesis, of course, would be...but I just toss it out to you for what it's worth...that new people, old people, isn't so much the point. It would be, perhaps, that simply from an organizational point of view...is this what you have in mind...that you could have, with one and the same piece of legislation, one agency for disease and another for accidents, simply so that there is less of a tendency to carry the safety aspect over into the...is this what you are telling us?

15 MR. UBLANSKI: I guess, and again, not being scholarly particularly, not having the benefits of scholarly research to back me up, it seems to me that at present the medical services branch runs industrial disease. That from top to bottom, it's all controlled by the medical services division.

20 Right from the word go, right from the bottom right to the top.

You know, they set out the guidelines, they make initial decisions, they make secondary decisions, they make tertiary decisions. They make all the decisions.

25 DR. DUPRE: Can I just ask you this?

MR. UBLANSKI: And I think that's where it has gone wrong.

DR. DUPRE: Is it your impression that if we were looking at the accident side there is not a similar domination of the Board...

30 MR. UBLANSKI: Right.

DR. DUPRE: ...by a particular group like the..?

MR. UBLANSKI: Right.

5 DR. DUPRE: Okay. Well, that's helpful. I'll just roll that over in my woolly little head for awhile.

MR. UBLANSKI: Well, I think in the industrial disease area it doesn't take very much insight to realize that that's what is happening now, and I've seen the results and I know that that's no good.

10 Now, maybe if you put in the kind of administrative controls that will reflect the chart that Eissen puts up, perhaps you can put a stopper on that and control that. Certainly that's not beyond the realm of possibility.

If that's the way you go and if that's what is tried, then we'll have to see how it works out.

15 But certainly I don't think you can just leave it as is, in the hands of the medical branch, to totally dominate, because I think as long as you do that, the results will always be the same no matter what the tools are you give me.

You can tinker with the system, but the results will be the same.

20 DR. DUPRE: Well, may I thank you very, very much indeed for your time with us today. It is well appreciated.

Mr. Lederer, did you wish to say something?

25 MR. LEDERER: Mr. Chairman, I wonder if I might just make a brief comment, and I do so by way of an observation and it's quite frankly something that rather concerns me about Mr. Ublanski's appearance here.

30 I, frankly, find it difficult to understand...and I say this with a great respect and I state it as an observation or a concern, if you wish, perhaps for a matter of discussion...I find it difficult to understand why it is that Mr. Ublanski is treated differently than any of the other...for want of a better term... expert witnesses that have appeared before this Commission.

5 MR. LEDERER: (cont'd.) He is not, as Mrs. Hanna or Mrs. Dodds, somebody who has suffered directly from the effects of exposure to asbestos. He is here because of his position within the labour movement, and has made any number of qualitative statements and judgements arising from that experience - statements and judgements which, because of his appearance as part of this phase of the hearing, are not subject to testing through cross-examination.

10 It strikes me that he really, in a very real sense, isn't in any different position here insofar as the basis of his appearance is concerned than any, for example, of the government officials who have appeared before you, the people who are my clients, and yet they, quite properly, have been subject to that cross-examination.

15 Again, it seems to me that he is rather different in quality from the others who have appeared before you today, and who quite properly, because they are members of the public and because we all recognize a certain...

20 DR. DUPRE: Excuse me, Mr. Lederer.

I'm sorry, Mr. Lederer.

25 MR. LEDERER: Only by way of repeating myself in conclusion anyway. I think you probably have my point, Mr. Chairman...it strikes me that, as I say, Mr. Ublanski really isn't in a different position than any of the, as I say, government officials who have appeared here, and yet he is not subject to that kinds of testing and that leaves me, at least, with some concern.

Now, you may find my concern misplaced, but it would have been wrong, I think, for me not to have at least made that comment for the record.

30 DR. DUPRE: Well, you know, certainly if Mr. Ublanski wishes to say something, he could. But could I perhaps

DR. DUPRE: (cont'd.) just put the following to you, counsel?

5 Having been around for these proceedings from day one, a shorthand answer to your question is that Mr. Ublanski put some points to us today in the kind of atmosphere he did because he chose to come forward in one of these informal phase hearings.

10 Now, when we went through our six days of informal hearings in what we call phase one, there were a substantial number of individuals from government, from business, from labour, who made all kinds of statements to us and only some from this group have been invited to give sworn testimony, and this, of course, after consultation between our counsel and counsel for the parties with standing.

15 So I think that that...I can tell you that what has gone on today is certainly not exceptional.

20 MR. LEDERER: Well, you will appreciate that at least in my experience before this Commission, it is exceptional to this point, and in fairness, of course...although I've read what I believe are the notes or minutes, if you like, of some of the hearings you held at the first phase...I'm not sure, with all due respect, that that really meets my concern.

25 Again, it's a little bit late to be changing the rules now, in any event. Certainly it would be unfair to Mr. Ublanski, I suppose, and frankly it would be unfair to me because I really hadn't considered the possibility of cross-examining him.

30 Frankly, for whatever reason, I wasn't aware of his brief until today, and I'll discuss that with Linda and I'm not entirely sure why it is that that is so, but it is. I just find it, as I say, quite incredible that somebody who comes here as a result of a position he holds, not as a result of direct effect on himself or his family, can make the kind of judgemental statements that have been made without the testing that has been

5 MR. LEDERER: (cont'd.) put to the other witnesses, that I am aware of, and again, I simply make the statement for the record. It may well be too late for the rules of the game, as such, to be changed.

DR. MUSTARD: Mr. Chairman, I would like to comment.

10 The phase one hearings were statements made by people about their views, in which the Commissioners asked them questions. I regard phase three as being no different. Indeed, I believe that's the way they have been described.

MR. LEDERER: Well, the issue that I'm raising...

15 MR. UBLANSKI: With all due respect, Mr. Lederman (sic) I think you've come to this matter rather late. We have all been here for quite awhile. These ground rules, let me assure you that I didn't do anything today that Mr. Bob Stewart didn't do two years ago or a year and a half ago when we presented our first brief.

20 I came here to present the views of the people that we represent, and based on the experiences that I have had, I thank the Chairman for his kind remarks in terming as a senior person or as an expert in any way, and I certainly don't claim that.

25 I came here to give my views, the same as everybody has given their views. Those views may be discarded. They may be regarded as being the views of the...how did Professor Barth put it...the inexpert and the uninformed, or whatever it is. I forget the phrase he used - a rather unfortunate phrase, I might add.

30 But I think you are allowing much more credence to my remarks than they really deserve. I just came here the same way everybody else has come, expressing their views based on their experiences. I have had some experience in this field, I felt that I could help the Commission by expressing my views, and that's what I did.

MR. LEDERER: Well, I don't...Mr. Chairman, it's

5 MR. LEDERER: (cont'd.) not my purpose to engage in a long or tortuous argument about this. I have attempted to make a point. I frankly, with all due respect to everybody else's comment on it, still think that it's valid.

10 Regardless of that, I certainly don't wish to press the matter any further. I think it's unfortunate that the arguments that I've heard in opposition to me fall back on the fact that I'm a fairly recent comer to the proceedings. It's a matter of substance and I think it's a matter of some importance, frankly, in the weight that is ultimately given to these various methods of accumulating information.

15 MR. UBLANSKI: If it's a matter of substance, it should have been raised back in September, 1979, when the initial format was devised.

20 DR. DUPRE: Although I think, Mr. Lederer, there is one thing that I could say that may be of help to you, just to make sure that you understand the full manner in which we have proceeded here.

25 You represent a party with standing, just as all the other counsel for parties do. Parties with standing can always ask specifically, on the basis, not infrequently, of what they have seen from a phase one hearing, that someone be invited to appear as a sworn witness. We have any of a number of examples from phase one, of whom one of the more prominent, for example, would be Dr. Paul Kotin.

30 Now, at this juncture what has gone on in our informal hearings is, as has always been the case, you know, duly transcribed, and if on the basis of anything that you have heard today you would...the party you represent would want to make a case for calling let's say Mr. Ublanski as an expert witness, we, first of all, through our counsel, would be willing to listen to you.

5 DR. DUPRE: (cont'd.) As to whether or not we would
wind up acceding to such a request, well again, it's gone on, as
you well know, through a process of negotiation in which, frankly,
our side is really above all, always, is that extra testimony really
going to be relevant to getting on with our job.

10 So in terms of the full procedure that we use here,
that avenue is certainly open to the party you represent, and that
includes any of a number of individuals who have come forward
in this informal setting.

MR. LEDERER: Thank you, sir.

DR. DUPRE: Thank you very much.

15 May I take it, Miss Kahn, that I now announce that
the Commission rises until ten a.m. on Monday the 12th of July?

MISS KAHN: That's correct.

DR. DUPRE: Fine. Thank you.

THE INQUIRY ADJOURNED

20
25 THE FOREGOING WAS PREPARED
FROM THE TAPED RECORDINGS
OF THE INQUIRY PROCEEDINGS

Edwina Macht
EDWINA MACHT

